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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No.

FRANK T. BARR, et al.,

Plaintiffs,

VS.

THE UNITED METHODIST CHURCH, et al.,

Defendants.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA

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TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED	3
RELATED MATTERS PENDING BEFORE THIS COURT	4
STATEMENT OF THE CASE	4
A. Nature of the Litigation	4
B. Allegations Concerning The United Methodist Church and Motion to Quash and Dismiss	6
C. Evidence Regarding The United Methodist Church	7
D. Rulings Below	15
REASONS FOR GRANTING THE WRIT	17
I. Section 388 of the California Code of Civil Procedure Cannot, Consistent with Due Process, be Interpreted to Allow an Action for Damages to be Brought Against an Aggregation of Persons and Entities Who Hold No Common Assets, and Who Have No Centralized Management	19
A. The Rule of Law Applied By the Court of Appeal	22
B. Fact Finding by the Court of Appeal	28
II. Section 388 of the California Code of Civil Procedure Cannot, Consistent with the Constitutional Guaranty of Free Exercise of Religion, be Interpreted to Render Liable to a Suit for Damages a Religious Denomination Composed of Many Separate Entities with No Unified Authoritarian Structure, Managing Board or Executive Officers and No Joint Denominational Assets	36
CONCLUSION	39
TABLE OF APPENDICES (A-1 through A-39)	A-1

TABLE OF AUTHORITIES

Cases

	PAGE
Bancroft-Whitney Co. v. McHugh, 166 Cal. 140 (1913)	28
Brady v. Reiner, 198 S.E. 2d 812 (W. Va. 1973)	31
California Clippers, Inc. v. United States Soccer Football Assn., 314 F.Supp. 1057 (N. D. Cal. 1970)	22
Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1974)	34, 35
Hall v. Bureau of Employment Agencies, 64 Cal. App. 3d 482 (1976), cert. denied, 97 S.Ct. 2187 (1977)	28
Hansberry v. Lee, 311 U.S. 32 (1940)	27
Hidden Lake Development Co. v. District Court, 183 Colo. 168, 515 P. 2d 632 (1973)	22
Jardine v. Superior Court, 213 Cal. 301, 2 P.2d 756 (1931)	19, 20, 21, 23
Jones v. Wolf, U.S. , 47 U.S.L.W. 4962 (July 2, 1979)	37
Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952)	36
McClure v. Salvation Army, 460 F.2d 553 (5th Cir. 1972)	36
McCorkle v. City of Los Angeles, 70 Cal. 2d 252, 449 P.2d 453, 74 Cal. Rptr. 389 (1969)	35
Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950)	25
NLRB v. Catholic Bishop, U.S. , 47 U.S.L.W. 4283 (March 21, 1979)	36
North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156 (1973)	35
Penrod Drilling Co. v. Johnson, 414 F.2d 1217 (5th Cir. 1969)	22
Roman Catholic Archbishop v. Superior Court, 15 Cal. App. 3d 405, 93 Cal. Rptr. 338 (1971)	38
Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976)	36, 37

	PAGE
Steuer v. Phelps, 41 Cal. App. 3d 468, 116 Cal. Rptr. 61 (1974)	21
Charles W. Trigg, et al. v. Pacific Methodist Investment Fund, et al., No. 78-0198-S (S.D. Cal., filed March 27, 1978	4, 7, 24
The United Methodist Church v. St. Louis Crossing Independent Church, 150 Ind. App. 574, 276 N.E. 2d 916 (1972)	30
United Mine Workers v. Coronado Coal Co., 259 U.S. 344 (1922)	20, 21, 23, 24
Wisconsin v. Yoder, 406 U.S. 205 (1972)	38
Yonce v. Miners Memorial Hospital Assn., Inc., 161 F. Supp. 178 (W.D. Va. 1958)	22

Statutes and Constitutional Provisions

United States Constitution, First Amendment	3, 36-38
United States Constitution, Fourteenth Amendment	3, 36
United States Code, Section 1257(3)	2, 34
California Code of Civil Procedure, Section 388	19, 36, 38
California Code of Civil Procedure, Section 418.10	34
Federal Rules of Civil Procedure, Rule 17(b)	4, 22

Miscellaneous

The Book of Discipline of the United Methodist Church (1976)	8-12, 14, 25-26, 28, 29
5 Cal. Jur. 2d § 45	35
3 Cal. Jur. 2d § 20 et. seq.	35
7 C.J.S. Associations § 1 (1937)	22
Note, 75 Harv. L. Rev. 1142 (1962)	31
Bishop Roy Short, United Methodism in Theory and Practice (1974)	30
Bishop Jack M. Tuell, The Organization of the United Methodist Church (rev. ed. 1977)	13, 14

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioners, Charles F. Golden, Paul W. Milhouse and James M. Walton-Myers, being the persons upon whom service of process was attempted in the name of the entire international religious denomination known as the United Methodist Church, a named defendant in the underlying action, pray that a Writ of Certiorari issue to review the judgment of the Court of Appeal, State of California, Fourth Appellate District, entered on March 8, 1979. That judgment reversed a March 20, 1978 decision by the trial court, which had quashed service of process on the Petitioners and dismissed the United Methodist Church as a party defendant.

OPINIONS BELOW

The judgment and opinion of the Court of Appeal, published at 90 Cal.App.3d 259, 153 Cal.Rptr. 322, is reproduced as Appendix ("App.") A to this Petition. The Minute Order decision of the trial court, entered March 20, 1978 and reversed by the Court of Appeal, is reproduced as App. B.

JURISDICTION

The California Supreme Court refused to grant a hearing to review the Court of Appeal's decision on May 17, 1979. See order included as App. D. This petition was filed within 90 days of that date. This Court has jurisdiction to review the Court of Appeal's judgment by Writ of Certiorari pursuant to 28 U.S.C. § 1257(3).[1]

QUESTIONS PRESENTED

This is one of a series of California cases, brought by the same plaintiffs or related parties, against "The United Methodist Church" seeking an aggregate of over one-half billion dollars in damages. This is the first time in history that a major international religious denomination has been held to be suable as an "unincorporated association". The case raises the following questions regarding the validity under the United States Constitution of state procedures regarding suits against such associations:

1. Can a California procedural statute relating to "unincorporated associations" be applied, consistent with the Constitutional guaranty of due process, to make amenable to a suit for damages an international religious denomination which, as a totality, (a) has no officers, executive board, or other decision-making mechanism, so that there is no

[1] The finality required by 28 U.S.C. § 1257 is discussed at pp. 34-35, *infra*.

person or body able to consult with counsel, plead, respond to discovery, or otherwise speak for the denomination in the course of the litigation and (b) holds no assets of any kind, so that a judgment against the denomination could be recovered only from the assets of separate jural entities bearing the denominational name?

2. Did the California Court of Appeal, by requiring the United Methodist Church to conduct litigation as if it were a unitary and quasi-corporate legal entity, based solely on the Court's own reading of Church documents, and contrary to expert testimony and internal ecclesiastical interpretation, interfere with the chosen government of the denomination, in violation of the right of free exercise of religion?

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

This case involves the interpretation of the following provisions:

1. The Fourteenth Amendment to the United States Constitution, which provides in pertinent part:

> ". . . nor shall any State deprive any person of life, liberty or property without due process of law . . ."

2. The First Amendment to the United States Constitution, which provides in pertinent part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

3. Section 388 of California's Code of Civil Procedure which provides:

> "(a) Any partnership or other unincorporated association whether organized for profit or not, may sue and be sued in the name which it has assumed or by which it is known.

"(b) Any member of the partnership or other unincorporated association may be joined as a party in an action against the unincorporated association. If service of process is made on such member as an individual, whether or not he is also served as a person upon whom service is made on behalf of the unincorporated association, a judgment against him based on his personal liability may be obtained in the action, whether such liability be joint, joint and several, or several."

RELATED MATTERS PENDING BEFORE THIS COURT

The essential issues raised in this petition are also raised in the context of Rule 17(b) of the Federal Rules of Civil Procedure in a petition for Writ of Certiorari, filed on June 11, 1979, in *Milhouse, et al.*, v. *United States District Court for the Southern District of California; Trigg, et al., Real Parties in Interest, No. 78-1855* (hereinafter "Trigg"). There, the United Methodist Church, named as a "control person", has been defaulted in a $5 million securities fraud case for failure to answer and conduct litigation as though it were a single party defendant. Petitioners respectfully request that the instant petition and the petition previously filed in *Trigg* be considered for consolidated review by this Court.

STATEMENT OF THE CASE

A. Nature of the Litigation.

All of the actions pending in California against "The United Methodist Church", including the *Trigg* case, now pending before the Court on Petition for Writ of Certiorari, pertain to the financial difficulties of Pacific Homes, Inc. (Pacific Homes), a California not-for-profit corporation which has, for many years, operated a group of facilities for the care of the elderly in California, Arizona and Hawaii. Many of the residents in the homes had entered into "lifetime care contracts" with Pacific Homes whereby, in

exchange for defined payments, Pacific Homes agreed to provide housing and care for the remainder of the residents' lives.

On February 18, 1977, Pacific Homes petitioned for relief under Chapter XI of the Bankruptcy Act. Subsequently, the proceeding was converted into a Chapter X reorganization proceeding with a court-appointed trustee who has since operated the Homes without any interruption in services.[2]

The financial condition of Pacific Homes required changes in the lifetime care contracts. In September of 1977, some 150 residents of Pacific Homes, purportedly on behalf of its 1,900 residents, brought the present case seeking either specific performance by all defendants of the contracts made with Pacific Homes, or, alternatively, damages allegedly caused by non-performance.

Because Pacific Homes is in proceedings under Chapter X the Bankruptcy Act, plaintiffs are looking to other parties, all of whom are strangers to the Pacific Homes contracts, to provide this relief. The defendants include four specified religious units within the United Methodist denomination: the Pacific and Southwest Annual Conference of the United Methodist Church, a California not-for-profit corporation, within whose geographic bounds the Homes functioned as an annual conference-related ministry; the General Council on Finance and Administration of the

[2] During the pending Chapter X reorganization proceedings, cash flow imbalances have stabilized, positive cash flow has been achieved and there is no expectation of closure of the Homes. In fact, the percentage of occupancy is increasing. To date, no resident has been required to leave the Homes for inability to pay increased rates. Contingency funds donated by concerned United Methodists and others are available to meet hardship cases, should any arise. Phillips Affidavit, Appendix exhibit B to Application for Stay Pending Review on Certiorari (filed June 12, 1979).

United Methodist Church, an Illinois not-for-profit corporation ("GCFA"); the General Board of Global Ministries of the United Methodist Church, a New York not-for-profit corporation; and the Division of Health and Welfare Ministries of the United Methodist Church, an Illinois not-for-profit corporation. Finally, Plaintiffs name as a defendant "The United Methodist Church" ("the denomination") in its entirety.

No issue is raised here, nor was any raised below, concerning the jural status of the four specifically named church units or of any other specific units within the denomination. All of the named units have appeared through their own separate counsel, answered, complied with discovery, and are prepared to defend on the merits. The issue before this Court is confined to the additional effort to name and sue generally the entire denomination as an "unincorporated association".

B. Allegations Concerning the United Methodist Church and Motion to Quash and Dismiss.

The Consolidated Complaint herein broadly describes "The United Methodist Church" as:

> ". . . an unincorporated association doing business in San Diego County, California, and consisting of numerous persons, associations, and corporations which were and are organized, and denominated and doing business as conferences, boards, commissions, councils and agencies."

(Consolidated Complaint at Par. 2). In fact, as detailed below, the denomination is composed of over 45,000 largely independent units, and 10 million individual members, without a common head, managing board, headquarters, or joint assets. After so defining the denomination as a broad "unincorporated association" the Complaint goes on to allege that the denomination is involved in a web of "alter ego"

or "agency" relationships with Pacific Homes and the other named defendants.

In an attempt to obtain personal jurisdiction over the denomination, plaintiffs served process upon the present petitioners, Charles F. Golden, a bishop who presides over the defendant Pacific and Southwest Annual Conference; Paul W. Milhouse, a former president of the denomination's Council of Bishops; and James M. Walton Myers, a former Assistant General Secretary of the defendant GCFA.

Messrs. Golden, Milhouse and Walton-Myers, appearing specially under Section 418.10 of the California Code of Civil Procedure, moved to quash service upon them and dismiss the Complaint, as against the denomination, for want of personal jurisdiction, (1) because the denomination does not have any quasi-corporate or unified structure or centralized administration which would render it an "unincorporated association" amenable to suit under Section 388 of the Code, (2) because neither they, nor anyone else, under the ecclesiastical law of United Methodism, is authorized to answer the Complaint, decide litigation issues, or otherwise appear and speak for the entire denomination—in fact, they are specifically forbidden to do so; and (3) because they personally had no authority to receive service of process for the entire denomination. The petitioners did not argue for any form of "religious immunity," but rather pointed out that any or all of the separate units composing United Methodism are amenable to suit. This is essentially the same position taken by the two persons chosen by plaintiffs to receive process in the name of the denomination in the *Trigg* case.

C. Evidence Regarding the United Methodist Church.

As in *Trigg*, petitioners supported their motion to quash and dismiss with the affidavits of several ecclesiastical experts within the United Methodist Church, explaining

the non-authoritarian and decentralized features of the denomination, and demonstrating that the denomination has never conducted affairs as if it were a single legal entity. Plaintiffs responded with an affidavit and chart prepared by their attorney, presenting his personal interpretation (a) of the ecclesiastical law and polity of the denomination and (b) of several documents concerning individual units of the denomination. The plaintiffs offered no expert testimony of any kind to refute the statements made by petitioners' church experts in support of the motion.

Petitioners' expert evidence reflected the ecclesiastical law of the United Methodist denomination, as officially stated in *The Book of Discipline of the United Methodist Church* (1976), the highest constitutional and legislative pronouncement of the denomination. Declaration of Murray H. Leiffer (January 6, 1978), Ex. H. Ex. AA thereto, ¶ 5; Affidavit of Ewing T. Wayland (March 7, 1978), Ex. V. Ex.H thereto; Affidavit of Paul Milhouse (January 5, 1978), Ex. H, Ex. G thereto, ¶ 3.[3] The denomination as a whole has never been incorporated. Ex. V, Ex. J thereto, ¶ 5. As detailed by *The Book of Discipline,* and explained in the affidavits, the denomination is an aggregation of many largely independent entities brought together in what is called "a connectional structure." See *The Book of Discipline,* at 231. There are basically four types of entities within the denomination, defined by the geographical scope of their ministry.

1. First, there are approximately 39,000 local churches affiliated with the United Methodist Church in the United States, and another 4,400 outside this country. Leiffer declaration, Ex. H, Ex. AA thereto, ¶ 10. Each local church is

[3] "Ex." refers to the exhibits contained in the jointly compiled record on review consisting of the materials submitted to the trial court regarding the motion to quash and dismiss.

responsible for its own financial and operating affairs. *Id.* The affairs of each local church are administered by an Administrative Board acting as an executive agency. *The Book of Discipline,* ¶¶ 247-250. No local church has been named as a defendant in the *Barr* case.

2. Operating in a broader geographical area, there are other church entities known as "annual conferences." *The Book of Discipline,* ¶¶ 700-751. This term refers to a meeting of clergy and laymen from many local churches in an area, and also refers to the area from which they come. There are 72 annual conferences within the United States and 42 such conferences distributed throughout Europe, Africa, and Asia. (These conferences are listed in App. F at A-33 to A-36.) See Leiffer declaration, Ex. H, Ex. AA thereto, ¶ 10. The members of the annual conferences regularly meet once a year to review matters of common concern, and to develop and support benevolent programs within their boundaries. *Id.,* ¶ 13. An example of such programs is provided by the Pacific Homes project which gave rise to the present litigation; this was a ministry related to the Pacific and Southwest Annual Conference. There are several hundred annual conference related agencies, such as hospitals, homes and orphanages, across the denomination. The funds necessary for such annual conference programs are sought directly or indirectly from the local churches, *The Book of Discipline,* ¶ 711, but an annual conference has no power to bind financially the denomination or any church unit associated with the denomination, other than itself. *id.,* ¶ 702(2).

The annual conferences are continuous bodies. They may meet more than once a year and have interim governing boards (*id.* ¶ 701(4)); they may incorporate (*id.* ¶ 701(1)); they each have a treasury and a treasurer (*id.* ¶ 717-718). No argument has been raised in this lawsuit about the jural status of the annual conferences or any other constituent

units of the denomination. In the *Barr* case, only one annual conference has been named as a defendant, the Pacific and Southwest Annual Conference, a California non-profit corporation. It has appeared and answered.

3. Next, in order of increasing geographical scope, are fourteen "jurisdictional" and "central" conferences. *The Book of Discipline,* ¶¶ 620-652; Leiffer declaration, Ex. H, Ex. AA thereto, ¶ 21. One of their principal functions is the election of bishops. Id., ¶ 22. The bishops of the denomination ordain and appoint ministers to the local churches. *The Book of Discipline,* ¶¶ 514-515, and preside, without voting, over annual conferences, whose direction the bishops must follow, Leiffer declaration, Ex. H, Ex. AA thereto, ¶ 22. The bishops of the denomination, active and retired, compose the Council of Bishops, *The Book of Discipline,* ¶ 525. This body is essentially a consultative group; it has no power to speak for or control the denomination or to commit any entity within the denomination to action. Leiffer declaration, Ex. H, Ex. AA thereto, ¶ 22; Milhouse affidavit, Ex. H, Ex. G thereto, ¶ 7. Neither the Council of Bishops nor any of the jurisdictional or central conferences has been named as a defendant in *Barr.*

4. The national and global operations of the United Methodist denomination are the concern of the remaining denominational entities—the General Conference and "general" boards. *The Book of Discipline,* ¶¶ 601-612. Every four years, delegates elected by the annual conferences assemble to form the General Conference, which serves as a legislative assembly. Leiffer declaration, Ex. H, Ex. thereto, ¶ 18. *The Book of Discipline* is the body of law enacted by the General Conference.[4] Only the General Conference can speak for the denomination as a whole. *The*

[4] The highest judicatory of the denomination, charged with interpretation of *The Book of Discipline,* is the Judicial Council. *The Book of Discipline,* ¶¶ 60-63.

Book of Discipline, ¶ 612(1). Successive General Conferences have established various boards and councils to carry out the work of the denomination on a worldwide basis. There are presently 13 such "general" boards. Leiffer declaration, Ex. 11, Ex. AA thereto, ¶ 20. All of these boards, and most of their subsidiary units, are incorporated. *Id.* However, the General Conference itself is not a continuing body. It meets quadrennially for approximately two weeks and then adjourns, *sine die.* It has no offices, and no permanent staff. *Id.,* ¶ 18. The General Conference may not delegate its functions to any other unit within the denomination during the four-year interval between its sessions. Decision No. 364 of Judicial Council, Ex. V, Exs. J, J-1 thereto.

The boards and councils established by the General Conference to perform the denomination's worldwide ministry receive their funds from the voluntary contributions of 10 million individual members of the denomination, through the local churches and annual conferences. About 94½ percent of the amounts donated by members of the denomination remain at the local level, for use by the local churches and annual conferences; the remaining 5½ percent contributed for world ministries, are identified as "general funds." This term does not denote unrestricted assets, but rather is used to signify that the funds are destined for ministries by the 13 "general" level agencies so designated because they are related to the General Conference, as opposed to some other sector of the denomination. Wayland Dep. at 215-217, 236-237; Wayland Affidavit No. 1, *Trigg* App. Ex. 2, ¶ 7. These funds are routed, under *The Book of Discipline* to GCFA, one of the 13 general level boards and an Illinois non-profit corporation. GCFA then acts as conduit to distribute these funds, in the manner specifically budgeted and directed by the General Conference. In this activity it is on occasion referred to as rendering "central treasury" services, but it is not the treasury or treasurer of the entire denomination. Wayland Dep. at 231.

In fact, GCFA's functions are essentially devoted to servicing eight of its twelve sister general level boards, and do not bring it into contact with the thousands of local churches or the vast majority of other non-general units composing the denomination. Wayland Dep. at 245-247; Wayland Affidavit No. 1, *Trigg,* App. Ex. 3, ¶ 4. In carrying out certain of its functions, GCFA sometimes works with a second general level board, the General Council on Ministries, which is charged with reviewing the Church's ministries. *The Book of Discipline,* ¶ 1001-1005. There is no question in this case about the jural, suable status of the general level boards.[5] GCFA and two other such units, the General Board of Global Ministries and the Health and Welfare Division have been named as defendants in *Barr.* All have appeared, answered, and provided extensive discovery.

The evidence before the trial court demonstrated that the church units listed above are interrelated and interconnected by a common faith and tradition, and by common representation at various conferences. However, it also showed that they operate with a high degree of independence. There is no chain of command linking these units nor are the levels described above layered vertically in any ascending order of authority or control. Rather, the basic constitutional units in the denomination are the 114 annual conferences, and no substantial changes in the organization and constitution of the denomination can be adopted without the concurrence of these conferences. *The Book of Discipline,* ¶ 37, 64. In the use of their funds, the separate annual conferences are not subject to the control of other

[5] GCFA contested the "long-arm" jurisdiction of a California court in the underlying case, *General Council on Finance and Administration* v. *Superior Court,* No. 78-300 in this Court, *cert. denied,* U.S. , 99 S. Ct. 281, (1978), but has never asserted that it was not a jural entity, nor did it raise in that case the issues presented here.

denominational bodies. Leiffer declaration, Ex. H., Ex. AA thereto, ¶ 13. Likewise, the general level boards are not subject to the control of any single person or council, but seek to carry out the programs of the General Conference in largely independent fashion. *Id.,* ¶ 20.

This and other decentralized characteristics of the denomination are noted by Bishop Tuell in his text. *The Organization of The United Methodist Church,* (rev. ed. 1977) at 127-129:

> "If someone had a complaint, and wanted to go to the head of the United Methodist Church with it, that head person would be hard to find. One might try the president of the Council of Bishops, but would discover that this person is primarily a presiding officer over the semi-annual meetings of the Council of Bishops. The president has no particular authority in the church at large not possessed by all other bishops. . .
>
> "One might try the general secretary of the General Council on Ministries, but would discover that this person, though head of an agency involved in coordinating the total work of the program agencies of the church, is by no means in charge of the total work of The United Methodist Church. If our complainant went to see the executive head of one of our boards or agencies, he or she would be told that that person has charge of only a certain portion of the work of the church. One might approach the presiding bishop of a session of the General Conference, but would be told that anywhere from fifteen to twenty-five bishops may share in the task of presiding at any quadrennial meeting of the General Conference. If one were to go to the president of the Judicial Council, he or she would be told, 'All we do is decide cases.'
>
> • • •
>
> "This is simply to illustrate the fact that power and authority are widely dispersed within The United Methodist Church, undoubtedly deliberately so. We have inherited from the founders of America a rather keen distrust of too much power centralized in one

person. There is not only not a head person, there are no headquarters of our church. This is not necessarily bad, but we should recognize that this general lack of central direction over the years has resulted in our various boards and agencies pretty much going their own independent ways, each developing its own programs which sometimes overlapped with programs of our other agencies and sometimes actually conflicted. . ."

Except for the quadrennial General Conference, there is no person or group who can speak for or commit the entire denomination to action. *The Book of Discipline,* ¶ 612. The affidavit of Ewing Wayland (Ex. V, Ex. L thereto) demonstrates, without contradiction by the plaintiffs below, that the United Methodist Church, in its denominational entirety and as distinguished from its affiliated organizations, has never:

(1) Employed any person or held any employer identification number;

(2) Held any bank account;

(3) Issued any check, note or draft;

(4) Held legal title to any property, real or personal;

(5) Except for "covenants" of religious cooperation and comity with other religious groups, entered into any contract;

(6) Filed a tax return;

(7) Maintained a denominational headquarters; or

(8) Established any officers for the entire denomination, and specifically, has never had a chief executive or other head person.

Ex. V, Ex. L thereto, ¶ 2; Ex. H, Ex. G thereto at ¶ 7; Wayland Dep. at 231.

The plaintiffs in *Barr* and the related cases have never specifically stated who they believe controls or can speak for the entire denomination. They have indicated that they

would seek to enforce any judgment they obtain against the entire denomination by levying against all gifts of "general funds" made by local church numbers for the specific support of national and global ministries of the Church, regardless of what denominational unit is in possession of such funds at a particular time. Thus the possible targets for levy would include United Methodist local churches, the annual conferences, the General Council on Finance and Administration acting as conduit, its twelve sister general boards and any of the hundreds of denominational units for whose religious and charitable ministries the funds are given in the first instance. Plaintiff's Answer to Petition for Hearing below, 4th Civ. No. 18244 (Supreme Court of California, 1979) at 43 n. 25.

D. Rulings Below.

On March 20, 1978, after considering the evidence of the parties and the arguments of counsel, the trial court, Honorable Ross G. Tharp, entered its Minute Order decision (App. B). The court found:

"The 'United Methodist Church' is an international religious denomination consisting of over 10,000,000 persons who worship in some 43,000 churches and missions throughout the world. The 'United Methodist Church' is a connectional structure maintained through a chain and series of periodic conferences. It has never been incorporated."

App. B at A-22.

The court held that the denomination was not sufficiently centralized to be deemed an unincorporated association subject to suit, citing an article in the Encyclopedia Brittanica which noted the diffuse organization of the denomination. *Id.* Finally, the court warned that:

"A contrary ruling would effectively destroy Methodism in this country, and would have a chilling effect on all

> churches and religious movements by inhibiting the free association of persons of similar religious beliefs."

App. B at A-22, 23. Plaintiffs appealed. On March 8, 1979, the California Court of Appeal reversed, holding that the United Methodist Church was a legal person, subject to suit.

The Court of Appeal recognized that the denomination "may be unique in that it has no single chief operating officer" (App. A at 11), but "the clearly defined operating and conceptual levels of responsibility starting with the General Conference . . . cannot be ignored." *Id.* The court also stated, without reference to the contrary expert testimony that "a persuasive argument can be made that the Council of Bishops is equivalent to the [denomination] board of directors." *Id.* The court similarly accepted other factual arguments made by plaintiff's counsel. It explicitly rejected the contrary expert testimony. App. A at A-17, 18.

The court held, however, that the question of the denomination's status was not a question of fact but involved only the application of law to uncontested facts. The court stated the law bluntly:

> "The criteria applied to determine whether an entity is an unincorporated association are no more complicated than (1) a group whose members share a common purpose, and (2) who function under a common name under circumstances where fairness requires the group to be recognized as a legal entity. Fairness includes those situations where persons dealing with the association contend their legal rights have been violated."

App. A at A-8, 9.

The Court of Appeal saw no due process or First Amendment problem in requiring the denomination to litigate as if it were a cohesive entity. And, in any event, it declined to apply First Amendment protections against judicial revision of church doctrine and polity, taking the position this would require a grant of religious immunity. App. A at A-18, 19. Finally, the Court perceived no due process problem in suing a denominational name without naming as defendants the component religious units whose assets might later be sought, in execution of a judgment against such a commonly named group, as purported "associational" assets. App. A at A-17.

Petitioners' Petition For Rehearing, filed with the Court of Appeal on March 23, 1979, was denied, without opinion, by Order of said Court entered on March 29, 1979 (App. C). After the California Supreme Court denied hearing, by Order dated May 17, 1979 (App. D), petitioners sought this Court's review.

REASONS FOR GRANTING THE WRIT

For many years, both federal courts and the courts of various states have permitted suits to be brought, as a matter of convenience in pleading, against "unincorporated associations." However, no such action has ever before involved a major international religious denomination. Rather, these suits have generally involved labor unions or other entities with a quasi-corporate structure. Nor has any court, to petitioners' knowledge, ever before defined the minimum characteristics necessary for treatment as a suable "unincorporated association." The Court of Appeal below devised and applied just such a definition. It held that any aggregation of persons or groups can be sued as an entity so long as its members (1) share a "common purpose" and (2) "function under a common name under circumstances where fairness requires the group to be recognized as a legal entity." App. A at A-9. The court made clear that considerations of "fairness" in this context could be limited to the interests asserted by those who seek to bring the action.

For the individuals and units who make up any aggregation alleged to be an unincorporated association, the

consequences of such a lawsuit may be severe. Their individual property may be at stake, so long as it can be claimed to be held for the benefit of the association, yet the suit may be in a distant forum, and the "association" may have no ability to present a concerted defense. Indeed, the association may have the independence of its members as a central tenet. Under the definition of the Court of Appeal, precisely such "aggregation" may be fused into a single legal person and deemed subject to suit. Surely every religious denomination fits the common purpose/common name rubric, even those whose members and units are most independent of one another—Congregationalists, Baptists, Unitarians. Any major religious denomination, regardless of structure, can be forced to respond, in any court, to any suit premised on the alleged acts or omissions of local religious units bearing the common name. The rubric applies equally well to wholly secular "associations" like "the Bell System" or "the Women's Movement." Individuals or groups affiliated with any such associations, under the rule of the Court of Appeals, can be subjected to lawsuits brought against the common name, regardless of their contacts with the forum state and regardless of the "association's" ability to defend.

In the present case, a loosely-structured, "connectional" religious denomination consisting of over 45,000 largely independent local churches, with no joint assets and no central management, has been subjected to a lawsuit seeking hundreds of millions of dollars in damages. To defend the lawsuit would require a restructuring of the government of the denomination to create a monolithic unit, able to speak with one voice and act in a unified manner; to default would threaten each local church, conference and board with a judgment against whatever is later deemed "association" property in its control.

The rule of Court of the Appeal has created a manifest injustice in the present case and it has potential for enormous

harm in other cases. It is an invitation for *in terrorem* litigation against a new class of defendants. This Court should grant certiorari to clarify the extent to which States can, consistent with the United States Constitution, allow aggregations of individuals and groups to be sued as entities.

I. SECTION 388 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE CANNOT, CONSISTENT WITH DUE PROCESS, BE INTERPRETED TO ALLOW AN ACTION FOR DAMAGES TO BE BROUGHT AGAINST AN AGGREGATION OF PERSONS AND ENTITIES WHO HOLD NO COMMON ASSETS, AND WHO HAVE NO CENTRALIZED MANAGEMENT.

The leading California case regarding suits against unincorporated associations is *Jardine* v. *Superior Court*, 213 Cal. 301, 2 P.2d 756 (1931). In that decision, the California Supreme Court upheld the constitutionality of Section 388 of the California Code of Civil Procedure, which provided for such suits. In so doing, the court noted the historical treatment of unincorporated associations:

> "For a long time the established rule was that in the absence of statute, an unincorporated association could not sue or be sued in its common name; all the members thereof had to appear in their own names as parties plaintiff or defendant. The basic reason was that the association was not, in the eyes of the law, a legal unit or entity, and had no legal capacity to become a party to an action. The difficulty was only one of procedure, and the objection was purely technical. The liabilities or rights of the members were in no way involved, and were not, in theory, impaired by the operation of the rule. They might have brought actions if they all joined as plaintiffs, and they might have been held to any liability imposed upon them by law, if sued and served individually." 2 P.2d at 759.

The Court then noted that various statutes, such as Section 388, were enacted to change the rule regarding suits

against unincorporated associations, but only as to procedure.

> "These statutes dealt solely with the manner of bringing actions, and were not intended to effect any change in the substantive law. Members of associations had the same rights and were subject to the same liabilities as before, only now they could be sued by a less complicated and cumbersome process.

Id.

No question was raised in *Jardine* as to whether the defendant stock exchange was an unincorporated association. Its sixty members paid dues and governed their affairs through elected trustees. The only question as to applicability of the statute was whether the exchange as whole "conducted business," a requirement which has, by amendment, been removed from Section 388.[6] Accordingly, the court in *Jardine* was not called upon to determine the characteristics of an unincorporated association subject to suit.

In *United Mine Workers* v. *Coronado Coal Co.*, 259 U.S. 44 (1922), this Court had earlier held, as a matter of federal common law, that the United Mine Workers of America could be sued as an unincorporated association. There, too, the Court was not required to specify the precise parameters of an unincorporated association. However, the Court did specify those aspects of the union's organization which made suit against it appropriate.

> "The body governing the union in the interval between conventions is the International Board consisting of the principal officers, the president, vice-president and secretary-treasurer, together with a member from each district. The president has much power. He can remove or suspend International officers, appoints the national

[6] The section now reads, in relevant part, "Any partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name which it has assumed or by which it is known."

> organizers and subordinates, and is to interpret authoritatively the constitution, subject to reversal by the International Board. When the Board is not in session, the individual members are to do what he directs them to do." 259 U.S. at 383-384.
>
> "The membership of the union has reached 450,000. The dues received from them for the national and district organizations make a very large annual total, and the obligations assumed . . . are so heavy that an extensive financial business is carried on, money is borrowed, notes are given to banks, *and in every way the union acts as a business entity, distinct from its members. No organized corporation has greater unity of action, and none is more power centered in the governing executive bodies.*" 259 U.S. at 385. (emphasis added)
>
> "It would be unfortunate if an organization with as great power as this International Union has in the raising of large funds and in directing the conduct of four hundred thousand members in carrying on, in a wide territory, industrial controversies and strikes . . . could assemble *its assets* to be used therein free from liability for injuries by torts committed in the course of such strikes. To remand persons injured to a suit against each of the 400,000 members to recover damages . . . would be to leave them remediless." 259 U.S. at 388-89. (emphasis added)

Thus, in both *Jardine* and *Coronado,* the unincorporated association found subject to suit had both a central management, capable of speaking for the association, and defined associational assets. Petitioners are aware of no decision in which a large aggregation without these characteristics has been held subject to a suit for damages.[7]

[7] *Steuer* v. *Phelps,* 41 Cal. App. 3d 468, 116 Cal. Rptr. 61 (1974) involved an action for damages against a religious group with no bylaws or directors of any kind, but the group had only nine members, and so was obviously able to act in a cohesive fashion without such formalities. In contrast one court looked to the absence of bylaws, offices, a mailing address, bank accounts, assets and obligations in determining that a committee of a sports asso-

In holding that the United Methodist Church was a suable "unincorporated association," the California Court of Appeal thus took an unprecedented action, for the denomination, as noted above, has no central executive whatever, and holds no property of any kind.

A. The Rule of Law Applied by the Court of Appeal

The Court of Appeal found the denomination to be an unincorporated association, subject to suit as an entity, by applying a unique rule of law. The court, for the first time in any reported decision, announced a sweeping definition based on "common purposes," "common name" and "fairness".

Under this novel definition, the United Methodist Church undoubtedly would be an unincorporated association. Its many constituent groups and individuals do share a common purpose, "the maintenance of worship, the edification

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ciation could not be sued as an unincorporated association, *California Clippers, Inc.* v. *United States Soccer Football Assn.*, 314 F. Supp. 1057, 1068 (N.D. Cal. 1970) The Colorado Supreme Court concluded that an unincorporated association should have "responsible officers elected according to by-laws". *Hidden Lake Development Co.* v. *District Court*, 183 Colo. 168, 173, 515 p. 2d 632, 635 (1973). That court said: "The status of an unincorporated association must be founded on more than a bald allegation. To sue as an incorporated association in name only is insufficient. Such legal entity must in fact exist . . ." *Id.* In *Penrod Drilling Co.* v. *Johnson*, 414 F. 2d 1217, 1222 (5th Cir. 1969, the court defined the term by reference to 7 C.J.S. Associations § 1, at p. 19 (1937): "An 'association' is a body of persons acting together without a charter, but upon the methods and forms used by corporations, for the prosecution of some common enterprise". It has been suggested that the "association" as used in Rule 17(b) Fed.R.Civ.P. "refers to associations such as trade unions, fraternal organizations, business organizations, and the like". *Yonce* v. *Miners Memorial Hospital Assn., Inc.*, 161 F. Supp. 178 (W.D. Va. 1958) (welfare fund of a union held not subject to suit as an unincorporated association).

of believers, and the redemption of the world," *The Book of Discipline*, p. 19. Of course, the denomination has a name. And the court's requirement of "fairness" is satisfied by the fact that plaintiffs have asserted a legal claim against the denomination.

However, under the definition of the Court of Appeals, every religious denomination, no matter how loosely organized, is an unincorporated association subject to suit, since all have such common purposes as "salvation," and all have common names. So, too, any aggregation of persons or corporations, commercial, social or political, cohesive enough to be known by a common name, is covered by the definition. The many companies known as "the Bell System" or "the ITT group" share the common purpose of engaging in profitable commercial enterprises. If a grouping can reasonably be named, then, under the decision below, it is suable.

This cannot be the law. In any suit against an association, it is ultimately the interests of individual members or component units which are at stake. As the California Supreme Court noted in *Jardine*, suit against an association is merely a procedural device for bringing the many individual interests involved in the association before the court. If there is a genuine, centrally directed associational entity, capable of defending a lawsuit and answering in damages, as in *Jardine* or *Coronado*, these individual interests will be protected. However, if there is not such an entity, then the individual interests will not be protected. Persons or local groups may find their assets threatened in a distant forum by lawsuits brought against any "association" to which they belong, regardless of how loosely formed that organization may be.

The present case presents these due process questions starkly. First, the property rights of absent parties are being adjudicated. Plaintiffs are seeking several hundred

million dollars for wrongs they allege were committed by specific corporate bodies, such as GCFA and PSWAC, related to United Methodism. Their right to sue these entities directly is not disputed. Yet they also sue the name of the entire denomination, without pointing to any entity separate from the collection of religious units described in paragraph 2 of the complaint. Unlike the United Mineworkers in *Coronado,* there is no central management or central funds separate from the component parts of the "association." Indeed, apart from its constituent local churches, conferences, and boards, there is no United Methodist Church. Thus, the only purpose for suing the denominational name can be to obtain a judgment enforceable against assets other than those held by the four entities specifically named as defendants.

Indeed, plaintiffs have asserted a broad agency theory, and have never specifically defined the assets they believe to be those of "the United Methodist Church." The most recent statement by plaintiffs' counsel on this matter is in their brief opposing the grant of certiorari in *Trigg*. There it is asserted that the "funds" of the denomination "include *at least* $60 million per year collected at the local church level and funneled through Annual Conference treasurers to . . . GCFA." (Br. at 25 n. 13; emphasis added.) Yet these funds do not stop at GCFA. Rather, they are funneled to the general level agencies which perform the work of the denomination on the national and international level. GCFA is in no way a storehouse of unrestricted funds available for judgment, but is merely a conduit for specifically designated funds to support "general" level ministries. (See pp. 11-12, *supra.*) Thus, plaintiffs appear to seek all funds held by any entity within the denomination which are intended for national or worldwide religious or charitable ministries, and will not even limit themselves to this. Because no assets are actually held by "The United Methodist

Church," plaintiffs are conveniently able to claim the assets of any group affiliated with the denomination.

Plaintiffs have suggested, throughout this litigation, that the unnamed units of United Methodism need fear no judgment against the denomination because such a judgment would only threaten assets of the denomination as a whole. The Court of Appeal apparently accepted this argument, citing (App. A at A-17) California Corporations Code section 24002: "Only the property of an unincorporated association may be levied upon under a writ of execution issued to enforce a judgment against the association." This is cold comfort, however, when "unincorporated association" is defined so broadly as to include an aggregation which, viewed as an entity, owns no property, and when plaintiffs will not limit their claims to assets held in the name of the association. The court's unprecedented definition, together with "agency" and "alter ego" allegations, makes the property of every constituent member potential "property of an unincorporated association." This result cannot comport with the basic tenet of due process that parties not have their interests adjudicated without notice. *Mullane* v. *Central Hanover Trust Co.,* 339 U.S. 306 (1950).

Secondly, and apart from the question of whose property is at stake, the United Methodist Church, not being an entity, cannot conduct the defense of a lawsuit. As a matter of church law, no person or group of persons, other than the General Conference (whose delegates from around the world meet every four years for ten days and then adjourn *sine die*), has the authority to act as spokesman for the denomination as a whole.

> "No person, no paper, no organization has the authority to speak officially for The United Methodist Church, this right having been reserved exclusively to the General Conference under the Constitution."

The Book of Discipline, ¶ 612(1). Thus, no one within the denomination has authority to answer the complaint or

assert the position of the denomination in consultation with counsel.[8]

The difficulty, moreover, is not simply a product of one paragraph of the denomination's rules of government. As a matter of practical fact, there is no single person or body which controls the United Methodist denomination. No one within the denomination, then, can instruct counsel or assemble the information necessary to compose intelligent pleadings and build a coherent case. Similarly, no one can answer discovery requests served upon "The United Methodist Church." Plaintiffs have never claimed, and the Court of Appeal did not find, that there is any "headquarters" within the denomination. In fact, there is no central record keeping facility and no means for directing the assembly of records in a central location. Nevertheless, plaintiffs have served an exhaustive document request on the "Custodian(s) of records of the United Methodist Church," demanding, *inter alia,* any and all documents of the denomination or its predecessors (thus dating back over 200 years) which "pertain to [its] . . . organization, structure, duties, function, purpose or work." Deposition Notice filed August 3, 1979, at 10. Plaintiffs have left it to the persons served to determine who this "custodian" is and how he should exert control over 45,000 units, internationally, in screening and gathering documents. This is simply one illustration of how litigation against a large diffuse aggregation without a central executive is, as a matter of fact, wholly unworkable.

The lack of capacity to conduct litigation again ultimately harms the separate groups and entities which compose the United Methodist denomination. Even if there were assets held in the name of the denomination, the members of the association would have a strong interest in preserving those assets, much as the beneficiaries of a common fund. Yet by sanctioning the present action, the Court Appeal made no provision for adequate representation of these interests. This, again, is a manifest denial of due process. *Hansberry* v. *Lee,* 311 U.S. 32 (1940).

Finally, the decision of the Court of Appeal has the potential effect of improperly foreclosing issues which ought to be decided at trial. One of the crucial allegations of the complaint is that the defendants are enmeshed in a web of mutual "alter ego" and "agency" relationships. They deny it. Yet the Court of Appeal, by finding all of United Methodism to be a single entity, and allowing the litigation to proceed on that basis, forces defendants into the appear-

[8] The Court of Appeal apparently believed that Paragraph 612(1) of the *Book of Discipline* was overridden by Paragraph 907(4) which empowers GCFA "[t]o take all necessary legal steps to safeguard and protect the interests and rights of The United Methodist Church." App. A at A-12, 13. Yet paragraph 907(4) provides that GCFA may make provision for legal counsel only "at the request of a general agency or bishop," presumably in connection with litigation involving a constituent body of the Church. The practical interpretation of Paragraph 907(4) has invariably been that GCFA will discharge its "legal" function by (1) maintaining a collection of legal briefs in cases of interest to religion, and (2) reimbursing Annual Conferences for up to 50% of their expenses of engaging their own counsel to deal with local problems. (Wayland affidavit, Appendix D to Petition for Rehearing, below).

The Court of Appeal's March 8, 1979 Opinion constituted the first time that any court had interpreted Paragraph 907(4) as rendering GCFA, in effect, house counsel for all of United Methodism. Accordingly GCFA, through its separate counsel not of record in the present litigation, applied on April 6, 1979 to the Judicial Council of the United Methodist Church for an interpretation of its proper functions under that provision, viewed in light of Paragraph 612, forbidding "speaking for the Church". On May 25, 1979, upon consideration of this issue, in compliance with the Church-wide notice, publication and other procedural requirements for such hearings set forth in *The Book of Discipline,* the Judicial Council ruled that GCFA has no authority to become a litigation representative for the entire denomination. A published syllabus of the Judicial Council's ruling No. 458 is included in the accompanying Appendix (App. E).

ance of joint agency. And this is despite the fact that the court's test of common purpose/common name, requires no showing of unified action whatever. The result is a blurring of normally recognized distinctions between separate legal entities.

The present case, then, provides the prospect for litigation conducted against an effectively absent party—the denomination—and a judgment enforced against actually absent parties—the thousands of church units which make up the denomination, with critical issues prejudged. All of this is of no concern under the definition of "unincorporated association" devised and applied by the Court of Appeal, because this is all consistent with the "common purpose/common name" rationale.

B. Fact Finding by the Court of Appeal

The Court of Appeal reached its conclusion that the United Methodist Church was an "unincorporated association" based, it said, on the application of law (the common purpose/common name definition) to uncontested facts.

> "The facts contained in the affidavits and declarations submitted, including the information in the *Book of Discipline of the United Methodist Church* (1976), are not in dispute." App. A at A-5.

This was a necessary pre-requisite to the court's decision, since the trial court had found that the denomination was not a jural entity, and since California, like most jurisdictions, requires that deference be given by appellate tribunals to the factual conclusions of a trial court.[9]

[9] It is a settled rule in California that courts of review will not reweigh evidence if substantial evidence of record supports the judgment below, *Bancroft-Whitney Co.* v. *McHugh,* 166 Cal. 140, 142 (1913). Also, the reviewing court must imply the necessary factual findings to support the judgment if there is any substantial evidence before it. *Hall* v. *Bureau of Employment Agencies,* 64 Cal. App. 3d 482, 496 (1976), *cert. denied,* 97 S. Ct. 2187 (1977).

For the reasons noted above, the rule of law fashioned by the Court of Appeal cannot be reconciled with the requirements of due process. Perhaps in response to this problem, the Court of Appeal made numerous statements to the effect that the United Methodist Church has acted as a cohesive unity under executive direction, largely incorporating arguments by plaintiffs. See App. A. at A-9 through A-14.[10] In so doing, the court simply engaged in its own interpretation of internal church documents, and ignored inconsistent facts and opinion. The Court of Appeal specifically noted that it was "rejecting the ecclesiastical expertise furnished by persons knowledgeable in the history development and faith of United Methodism." App. at A-17, 18. The court did in fact resolve factual disputes in the course of its opinion. So that the constitutional issues raised by the "common name/common purpose" are not obscured, several of the Court of Appeal's findings of fact are here noted and placed in the context of the evidence presented to the trial court.

1. The Court of Appeal found that since *The Book of Discipline* gives the bishops of the denomination the duty of "overseeing" or "superintending" its affairs, the Council of Bishops is akin to a Board of Directors of United Methodism. App. A. at A-11. As noted above, (page 10), the expert evidence is clear that the Council of Bishops is not the managing board of all United Methodism; in fact the Council has no authority to direct *any* action by any individual or unit in the denomination. Leiffer Dep. at 142; Milhouse affidavit (App. Ex. B to Petition for Rehearing Below) at 4; Ex. H, Ex. C thereto, Milhouse affidavit herein, at Par. 7.

[10] Plaintiffs' persistent practice in this litigation has been to refer to action taken by any unit within United Methodism as that of "UMC," thus assuming the issue which is to be resolved. The Court of Appeal adopted this practice.

In 1974, long before this litigation began, Bishop Roy Short made precisely the same statements in his text *United Methodism in Theory and Practice* (at 74-75):

> "According to United Methodist law, the Council of Bishops is given no authority to act for the Church between sessions of the General Conference. Neither is it given any power of control over the Annual Conferences or over the various agencies of the Church. . . . *The Council is not a control body in United Methodism. It should be understood that back of this limitation lies almost 200 years of history.*" (Emphasis added)

2. The court found that the denomination has been involved as a "principal" in other litigation, and has been held by the courts to be a "hierarchical" church. App. A. at A-13. This represents an erroneous understanding of how the denominational name came to be used in certain litigated cases erroneously cited by plaintiffs. These cases involved local units and their properties, not the whole denomination. In the trial court, petitioners showed that all such cases were strictly internal within annual conferences involving local church disputes, and that they were the result of litigation decisions by local church personnel who acted without any external denomination direction or control. Wayland affidavit, App. Ex. A to Petition for Rehearing below; Frank Jones affidavit, Ex. V, Ex. M thereto.[11]

[11] In the entire history of the United Methodist Church and its predecessors, there is only one reported case in which the name of the entire denomination appeared in the caption. *The United Methodist Church* v. *St. Louis Crossing Independent Church,* 150 Ind. App. 574, 276 N.E. 2d 916 (1972). This suit was brought by schismatic members of a local church, seeking an injunction enforcing their claim to the property of that local church. It was they who named the denomination as a defendant, but the action was defended by a district superintendent of a district within an annual conference and by other local interests, 276 N.E.2d at 917. The capacity of the denomination was not relevant or at issue.

There are three similar trial court actions in Georgia which are unreported. In each case, a dissident group had attempted to take over the property of a local church, and the name "The United Methodist Church" was used by the annual conference and local authorities which actually brought suit against the dissidents, in order to indicate that the interests of all United Methodists were involved. See Jones affidavit, Ex. V, Ex. M thereto. The Court of Appeal refers to this affidavit as containing the belief's of "UMC's own lawyer" when the point at issue was the question of whether Frank C. Jones *had* acted as "UMC's own lawyer." The affidavit filed with the trial court showed he was acting solely on behalf of local officials in the affected Annual Conference without any external direction.

Nor is the finding that the denomination is hierarchical of significance here. The term "hierarchical", as developed by courts in determining church property disputes, is used in opposition to the "congregational" form of church government, "in which the autonomy of the local congregation is the central principle." Note, Judicial Intervention in Disputes over the Use of Church Property, 75 Harv. L. Rev. 1142, 1143-44. The "connectionalism" of the United Methodist Church is simply one form of church government within the broad hierarchical category. Id., at 1144 n. 14; *Brady* v. *Reiner,* 198 S.E.2d 812, 827 (W. Va. 1973). The designation "hierarchical" in local property cases simply has no relevance to the issues involved here.

3. The Court of Appeal observes (App. A. at A-16, 17) that, according to a 1967 publication, the Methodist Health & Welfare Certification Council of the Board of Hospitals & Homes of The United Methodist Church granted Pacific Homes "affiliate status." The opinion omits the crucial language of that report, which had been placed before the trial court, defining affiliated status as follows:

> "An affiliated . . . agency will be one which has applied for certification and has reached the level of affiliate. *An agency's church 'relationship' will be to the Annual Conference.*" (Emphasis added, Ex. V, Ex. N-6 thereto at 2.)

This clearly indicates that the homes and hospitals were not instrumentalities of any central denominational executive, but rather operated as ministries in relationship to separate annual conferences.

4. Apparently focusing upon a sentence contained in a letter from a former General Secretary of GCFA to the IRS to the effect that GCFA is the "central treasury and fiscal agent" of Methodism, and noting that five and one-half percent of total member contributions "are given annually to GCFA" (App. A. at 12), the Court suggests that GCFA is the end-recipient and keeper of denominational funds. The evidence was uncontradicted below that GCFA is not a banker or repository of The United Methodist Church. Rather, it is a conduit to pass monies, called "general" funds because of their specific allocation to general level agencies, on to its twelve sister Boards conducting various worldwide ministries at the "general level" of the denomination. GCFA is also a provider of fiscal support services, such as auditing and check-writing, sometimes referred to as "central treasury" services, to certain of these twelve boards. GCFA interacts with only a small fraction of the units composing United Methodism. Wayland Dep. at 150-152; 245-248. As stated earlier, there are no funds of the United Methodist Church, *per se,* since all assets are those of the separate constituent bodies. Espie Affidavit, Ex. V, Ex. K thereto at ¶ 4; Wayland Affidavit, Ex. V, Ex. L thereto, at ¶ 2.

5. Finally, in seeking to depict the entire denomination as a single legal entity, the Court of Appeal refers to a high-limit insurance contract covering "UMC" (App. A. at A-13), thus adopting contentions made by plaintiffs to the trial court which were contradicted by affidavit testimony. (Ex. V, Ex. K thereto). This testimony showed that the policy in question was one of thousands of separate insurance contracts taken out by the various units across the United

Methodist Church, and that it applied to only a handful of specific church units and named property locations out of tens of thousands making up the denomination. As the affidavit testimony showed, the person arranging coverage added the term "The United Methodist Church" as an "overlay" to the relatively short list of specifically named insureds in Policy Endorsement No. 1 simply as a matter of prudence, but:

> "The United Methodist Church . . . is not incorporated, holds no title to any property, real or personal, or other asset of any kind either at the scheduled locations or elsewhere. It has no employees, it has no office location or headquarters. No portion of the [annual] premium of $19,991 for this insurance policy was calculated with respect to any identifiable insurance coverage for 'The United Methodist Church' as a totality and religious connection." (*Id.,* at 5)

This policy then, was hardly a "high-limit contract of insurance on the United Methodist Church." The Court of Appeal was further mistaken in stating that the cover sheet on the policy referred to the United Methodist Church as a corporation. The "corporation" box was checked on the form, not to identify the denomination as such (which it is not), but to reflect the fact that the applicant, GCFA, was a corporation.

These factual disputes, again, were not relevant to the holding of the Court of Appeal. Even properly viewed, the United Methodist Church would be an "unincorporated association" under the common purpose/common name test which that court devised. Had the court applied a legal standard which considered the actual operations of the "association" named as defendant, it might have reviewed the facts more carefully. As the trial court rightly concluded, there is no basis for determination that the denomination operates with any centralized authoritarian polity.

C. The Finality of the Decision

Although the decision of the Court of Appeal provides that there be further proceedings against the United Methodist Church in this matter, the decision is effectively a final one against the denomination, satisfying the prerequisite for this Court's jurisdiction under 28 U.S.C. § 1257. In *Cox Broadcasting Corp.* v. *Cohn,* 420 U.S. 469, 476-87, (1974) this Court outlined four categories of cases which have been treated as final decisions for the purposes of Section 1257, even though only the federal issue presented by the cases had been finally decided by the state courts, and further proceedings remained for lower state court action. The present case fits two of the *Cox Broadcasting* categories.

First, this case appears to present a situation "where the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case." 420 U.S. at 481. After the decision of the Court of Appeal, the petitioners, in order to avoid default and potential judgment of over 100 million dollars, were required to file an answer on the behalf of the United Methodist Church. This answer is included as App. F in the appendix bound herewith. If plaintiffs ultimately do not prevail against the denomination, the issue of its amenability to suit will be moot. However, should the plaintiffs prevail, the petitioners' answer—even though it attempts to preserve the federal question—may be deemed a waiver.

Section 418.10 of the California Code of Civil Procedure sets forth rules of pleading which do not provide a named defendant the opportunity to answer or defend on the merits while saving jurisdictional defenses for post-judgment review. These provisions have been interpreted

as requiring that any answer be deemed an irrevocable submission to jurisdiction. *McCorkle* v. *City of Los Angeles,* 70 Cal. 2d 252, 257058, 449 P.2d 453, 74 Cal. Rptr. 389 (1969); 5 Cal. Jur. 2d § 45, 3 Cal. Jur. 3d § 20, *et seq.* Thus, unless this Court now reviews the issues raised by this petition, they may prove unreviewable. Under these circumstances, the issue is ripe for review. *Cf. North Dakota State Board of Pharmacy* v. *Snyder's Drug Stores, Inc.,* 414 U.S. 156 (1973).

Second, this case is one in which "reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action," and "a refusal to immediately review the state-court decision might seriously erode federal policy." *Cox Broadcasting,* 420 U.S. at 482-83. This case presents the first of what could be a new style of *in terrorem* actions against major religious denominations, contrary to the due process guaranteed by the Constitution.

If this litigation is allowed to proceed, there is no one who can, as a matter both of church law and of fact, conduct this litigation on behalf of the entire United Methodist Church. Necessarily, the litigation would result in ineffective representation of whatever interests are found to be encompassed under the denominational name. The present petitioners have filed an answer denying the jural status of the United Methodist Church and their own authority to speak on its behalf. However, these petitioners cannot conduct a lawsuit. The members of the denomination face a potential judgment of millions of dollars with no means of defense. These constituent units of United Methodism will, as things now stand, have foregone their defenses on the merits. The question is too important and too pressing to postpone.

II. SECTION 388 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE CANNOT, CONSISTENT WITH THE CONSTITUTIONAL GUARANTY OF FREE EXERCISE OF RELIGION, BE INTERPRETED TO RENDER LIABLE TO A SUIT FOR DAMAGES A RELIGIOUS DENOMINATION COMPOSED OF MANY SEPARATE ENTITIES WITH NO UNIFIED AUTHORITARIAN STRUCTURE, MANAGING BOARD OR EXECUTIVE OFFICERS AND NO JOINT DENOMINATIONAL ASSETS.

The denials of due process engendered by the decision of the Court of Appeal, outlined above, are exacerbated in this case because the free exercise of religion is involved.

This Court has made it plain, in repeated decisions, that the First Amendment, made applicable to the states through the Fourteenth, protects not only the systems of religious beliefs, but also systems of religious organization. *Serbian Eastern Orthodox Diocese* v. *Milivojevich,* 426 U.S. 696, 721-22 (1976); *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94, 116 (1952) ("religious freedom encompasses the power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *See NLRB* v. *Catholic Bishop,* U.S. , S. Ct. (1979) (interpretation of the National Labor Relations Act to require collective bargaining for teachers in church schools would impermissibly intrude on religion); *McClure* v. *Salvation Army,* 460 F.2d 553, 560 (5th Cir. 1972) (interpreting Title VII of the Civil Rights Act of 1964 not to apply to the employment of ministers by a church).

The decision of the Court of Appeal affronts the right to free choice of religious polity in two ways. First, the court improperly determined the polity of United Methodism by explicitly rejecting all expert testimony on the subject, and substituting its own reading of church law and documents, wholly unsupported by any expert evidence. No expert witness was produced by plaintiffs at any stage of the proceeding. It is manifest that the language and usages of churchmen may be quite different from the language of courts. In the *Serbian Church* case, 426 U.S. at 714-15 n. 8, this Court quoted the following observation from *Watson* v. *Jones,* 13 Wall 679, 723 (1872): "It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith [of large denominations] as the ablest men in each are in reference to their own." In its most recent religious decision, *Jones* v. *Wolf,* U.S. , 47 U.S.L.W. 4962 (July 2, 1979), this Court divided on the proper method for determining right to ownership of local church property between two schismatic groups. Both majority and minority recognized, however, that interpretation of church law and polity was a difficult task for civil courts. *Eg.,* 47 U.S.L.W. at 4964 ("neutral principles" approach desirable because it avoids "entanglement in questions of religious doctrine, polity, and practice").

By relying on its own reading of the ecclesiastical law of United Methodism, the Court of Appeal gave the denomination a form of government, centralized and authoritarian, much different from the "connectionalism" which United Methodists actually chose during a process of development over two centuries.

More critically, however, the impact of the court's decision is to force the denomination to *act* as though it were centralized and authoritarian. For, barring reversal by this Court, the members of the denomination can only defend their rights in this lawsuit by creating a central authority capable of speaking for United Methodism as an entity, binding its many independent units by the filing of legal documents, and directing its components in matters such as compliance with discovery and satisfaction of judgment. The alternative is total dissolution of the denomination—cessation of all common effort of any kind.

If the standard of jurisdiction devised in the instant case prevails, then it would follow that any class suit plaintiff

in quest of a "deep pocket" can now parlay money claims asserted against any local community church, parish, or religiously related hospital, college or orphanage into oppressive legal assaults upon whole religious systems. Only formula pleading of "alter ego" and "agency" will be necessary to achieve this unprecedented result and force any major religious denomination in the spectrum of polities, from Roman Catholic[12] to Baptist, to defend damage actions in any courthouse as an asserted "unincorporated association" irrespective of whether it is inherently capable of the task.

There is no doubt that society can and must limit the freedom of religious organizations to act, but only on behalf of "those interests of the highest order and those not otherwise served." *Wisconsin* v. *Yoder*, 406 U.S. 205, 215 (1972). The interest asserted by plaintiffs in this case is a right to recovery for alleged wrongs. There is no need to require reorganization of the polity of the United Methodist Church to serve that interest. *Any* unit of the denomination is subject to suit if it has acted wrongly; there is no claim here of religious immunity, despite plaintiffs' repeated statements to the contrary. There is no need to create an overarching central management which worshippers within the denomination have shunned since the days of John Wesley. The decision of the Court of Appeal failed to adequately consider either the impact on the exercise of religion of its application of Sec. 388 of the California Code of Civil Procedure or the alternatives to that application. In order to protect the chosen government of The United Methodist Church, this Court's review is needed.

[12] A much sounder perception of the dangers inherent in broadside actions against whole denominations is evident in *Roman Catholic Archbishop of San Francisco* v. *Superior Court*, 15 Cal. App. 3d 405 (1971). There, the California Court of Appeal, in a suit based on an alleged contract by a denominational unit in Switzerland, was unwilling to view the Roman Catholic Church as a single, indivisible entity.

CONCLUSION

For the reasons stated above, petitioners respectfully pray that their Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL,
FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

FRANK T. BARR, et al., *Plaintiffs and Appellants,* v. THE UNITED METHODIST CHURCH, *Defendant and Respondent.*	4 Civ. No. 18244 (Superior Court No. 404611)

APPEAL from an order of the Superior Court of San Diego County. Ross G. Tharp, Judge. Reversed.

Milberg, Weiss, Bershad & Specthrie, William S. Lerach, Gregg A. Johnson, Frederick J. Milberg; Wied, Granby & Alford, Colin W. Wied and David J. Yardley, attorneys for Plaintiffs and Appellants.

Sullivan, Jones & Archer, John H. Le'Estrange, Jr., Daniel R. Salas, Robert V. Vallandigham, Jr. and William F. Fahey; Witwer, Moran, Burlage & Atkinson, Samuel W. Witwer, Sr. and Samuel W. Witwer, Jr.; Musick, Peeler & Garrett, William McD. Miller III and Wayne B. Littlefield; Hughes, Hubbard & Reed, William H. Levit, Jr. and John H. Blue, attorneys for Defendant and Respondent.

Breed, Abbott & Morgan and Thomas A. Shaw, Jr., as Amici Curiae on behalf of Defendant and Respondent.

O'Melveny & Myers, Bennett W. Priest and Robert J. White; Kadison, Pfaelzer, Woodard, Quinn & Rossi and Allen Woodard, attorneys for Intervenors.

The guarantees of due process of law and religious freedom under the State and Federal Constitutions do not pro-

hibit the United Methodist Church, a legal entity under Code of Civil Procedure section 388, subdivision (a), from being sued.[1] We reverse the order of the trial court quashing service of summons on the United Methodist Church.[2]

[1] Code of Civil Procedure section 388, subdivisions (a) and (b), provides as follows:

"(a) Any partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name which it has assumed or by which it is known.

"(b) Any member of the partnership or other unincorporated association may be joined as a party in an action against the unincorporated association. If service of process is made on such member as an individual, whether or not he is also served as a person upon whom service is made on behalf of the unincorporated association, a judgment against him based on his personal liability may be obtained in the action, whether such liability be joint, joint and several, or several."

[2] The entire text of the minute order is as follows:

"The 'United Methodist Church' is an international religious denomination consisting of over 10,000,000 persons who worship in some 43,000 churches and missions throughout the world. The 'United Methodist Church' is a 'connectional' structure maintained through a chain and series of periodic conferences. It has never been incorporated.

"A respected unbiased source, 'The Encyclopedia Britannica,' 1959 Ed., Vol. 15, p. 358, states: 'Methodism has continued for more than two centuries to proclaim a freedom of spirit as opposed to the bondage of an organization, and its appeal has been based on the reality of a personal experience of spiritual emancipation through faith in Christ.'

"The Court rules that: 'The United Methodist Church' is no more than a 'spiritual confederation' and is not a jural entity or unincorporated association subject to suit under Code of Civil Procedure 388. A contrary ruling would effectively destroy Methodism in this country, and would have a chilling effect on all churches and religious movements by inhibiting the free association of persons of similar religious beliefs. If all members of a particular faith were to be held personally liable for the transgressions of their fellow churchmen, church pews would soon be empty and the pulpits of America silent.

"Accordingly, the motion to quash service of process on 'The United Methodist Church' is granted."

The Procedural Background

Plaintiffs commenced their class action on behalf of approximately 1,950 present and former residents of the 14 retirement homes operated in California, Hawaii and Arizona by Pacific Homes Corporation (Pacific Homes) for equitable relief or damages.[3] The complaint alleged each member of the class had entered into a "continuing care agreement" with Pacific Homes;[4] that on or about February 18, 1977 Pacific Homes petitioned for relief under Chapter 11 of the Bankruptcy Act in the United States District Court for the Central District of California, and that the defendants Pacific and Southwest Annual Conference of the United Methodist Church (PSWAC), a California corporation, the General Council on Finance and Administration of the United Methodist Church (GCFA), and the United Methodist Church (UMC), were each financially responsible for the operations of Pacific Homes. Plaintiffs sought a declaration requiring each of the defendants to specifically perform the continuing care agreements between each plaintiff and Pacific Homes or for damages.

[3] The original complaint, filed September 21, 1977, contained six causes of action. The first amended complaint, filed December 2, 1977, with seven causes of action, sought the same relief as the original complaint, but added as defendants the accounting firm of Coopers and Lybrand, and the General Council on Finance and Administration of the United Methodist Church (GCFA), a corporation. Reference to the complaint includes reference to the first amended complaint.

[4] The continuing care agreement provided that Pacific Homes would furnish lifetime care, including medical, nursing and convalescent care, accommodations and in most instances, food service. Many of the plaintiffs had pre-paid their contracts and were entitled to lifetime care at no additional cost; agreements involving the remaining plaintiffs required fixed monthly payments for life, guaranteed never to increase or limited to deferred increases based upon inflation.

Plaintiffs' bases for jurisdiction over UMC in each cause of action are the allegations which state UMC was an unincorporated association, Pacific Homes was the agent of the defendants PSWAC, GCFA and UMC and in doing the acts alleged was acting within the scope of its authority as agent and with the permission, knowledge and consent of PSWAC, UMC and GCFA; each defendant or predecessor in interest was the agent of each other defendant and in doing the acts alleged, each was acting within the scope of his authority with the permission, knowledge and consent of each other defendant; and Pacific Homes was the alter ego of each defendant.

Persons upon whom service of process was attempted on behalf of UMC moved to quash the service under Code of Civil Procedure section 418.10 on the grounds that (1) UMC was merely a loose connectional system and not a jural entity capable of being sued under Code of Civil Procedure section 388, subdivision (a); and (2) to permit suit against UMC was unconstitutional as a violation of the due process, free exercise and establishment of religion provisions of the United States and California Constitutions. Plaintiffs appeal from the order granting the motion to quash service of summons (Code Civ. Proc., § 904.1, subd. (c)).

The United Methodist Church is a Jural Entity under Code of Civil Procedure Section 388, Subdivision (a)

The Status of UMC in the Litigation is a Question of Law and Not of Fact

The initial argument made by UMC is that as an elementary principle of appellate procedure, we must uphold the trial court order if it is supported by any substantial evidence. (See gen. *Bancroft-Whitney Co.* v. *McHugh* (1913) 166 Cal. 140, 142; 6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, § 245, p. 4237.) The first difficulty we encounter

with this proposition is it assumes the trial judge made a factual determination. Although there was a plethora of evidence on the issue of whether UMC was an unincorporated association, the trial court explained its holding by reference to two sets of considerations. One was peculiar to Methodism with apparent reliance on the Encyclopedia Britannica as an unbiased source; the other was of general applicability to "all churches and religious movements" with the apparent assumption that the suit against UMC involved the unconstitutional interference with the free exercise of religion. Nothing is contained in the trial court order which suggests a factual determination was made which involved the process of weighing the evidence which was presented. Secondly, the analysis of whether UMC is a jural entity involves a review of data relating to the creation, existence and operation of UMC. The facts contained in the affidavits and declarations submitted, including the information in the Book of Discipline of the United Methodist Church (1976), are not in dispute. The only ostensible factual conflict which arises is related to the ultimate issue expressed in opinions of witnesses on behalf of UMC to the effect that UMC cannot be sued. "In short, this is not a true case of conflicting evidence in which a reviewing court will refuse to disturb findings based thereon." (*Cosper* v. *Smith & Wesson Arms Co.* (1959) 53 Cal. 2d 77, 81; see also *Parsons* v. *Bristol Development Co.* (1965) 62 Cal. 2d 861, 866, fn. 2.) The result which must be reached in this case does not rest on ecclesiastical expertise, but rather on principles of law. The question as to the jural status of UMC is one of law and not of fact. (*Ibid.;* cf. *Brandeburg* v. *New York Tel. & Tel. Co.* (1975) 49 Cal. App. 3d 893, 896; *Agalite-Bronson Co.* v. *K. G. Limited* (1969) 270 Cal. App. 2d 308, 310.)

The Criteria to be Applied to Determine Whether an Entity is Capable of Being Sued as an Unincorporated Association

> "For a long time the established rule was that in the absence of statute, an unincorporated association could not sue or be sued in its common name; all the members thereof had to appear in their own names as parties plaintiff or defendant. The basic reason was that the association was not, in the eyes of the law, a legal unit or entity, and had no legal capacity to become a party to an action. [Citations.] The difficulty was only one of procedure, and the objection was purely technical. The liabilities or rights of the members were in no way involved, and were not, in theory, impaired by the operation of the rule. They might have brought actions if they all joined as plaintiffs, and they might have been held to any liability imposed upon them by law, if sued and served individually. But where associations with large membership were involved, the operation of the rule frequently has inconvenient and unjust consequences, and various exceptions came to be recognized." (*Jardine* v. *Superior Court* (1931) 213 Cal. 301, 307-308.)

Code of Civil Procedure section 388, enacted to eliminate procedural problems in actions against an unincorporated association, was held constitutional in *Jardine* v. *Superior Court, supra.*

In its original form, only persons transacting business under a common name could be sued in that name, but "business" was ultimately construed so broadly it constituted a slight limitation on the right to sue an unincorporated association. (See Law Revision Commission Comment (1967 Amend.) *Herald* v. *Glendale Lodge No. 1289* (1920) 46 Cal. App. 325, 330.) The 1967 amendment to Code of Civil Procedure section 388 made clear an unincorporated association, whether organized for profit or not, could either sue or be sued in the name which it had assumed or by which it was known. The trend of case law has been the rejection of legal niceties to assure full recognition of the unincorporated association as a separate legal entity. The basis for

this rejection of procedural rigidity has been specifically articulated in labor law disputes.

> "The social and economic realities of the present-day organization of society has thus led this court and others to recognize the suability of unions. [footnote omitted.] . . . We must recognize that the society of today rests upon the foundation of group structures of all types, such as the corporation, the cooperative society, the public utility. Such groups must, of course, operate successfully within the society; one of the prerequisites to that functioning is, generally, liability to suit and opportunity for suit. To frustrate that viability by the imposition of outmoded concepts would be to impair the institutions as well as to impede the judicial process." (*Daniels* v. *Sanitarium Assn., Inc.* (1963) 59 Cal. 2d 602, 607-608; see also *Marshall* v. *International Longshoremen's & Warehousemen's Union* (1962) 57 Cal. 2d 781.)

Statutory enactments in California involving the unincorporated association have been consistent with case law development. In 1967 the Corporations Code was amended to include the definition of unincorporated association as "any partnership or other unincorporated organization of two or more persons, whether organized for profit or not . . . ." (Corp. Code, § 24000, subd. (a).) It has been made liable to third persons to the same extent as if the association were a natural person (Corp. Code, § 24001); and may protect its name and insignia (Corp. Code. §§ 21300-21310).

On a national basis, the trend continues to assure legal status to organizations where in fairness it is appropriate. For example, in *State of Georgia* v. *National Democratic Party* (D.C. Cir. 1971) 447 F.2d 1271, cert. den. Oct. 12, 1971, the National Republican Party, one of the named defendants, was found to be an unincorporated association contrary to its argument that it was composed only of state republican parties which acted in concert to conduct national

party business and that between the quadrennial conventions, the Republican National Committee handled the national affairs of the Republican National Convention. In *Ripon Society* v. *National Republican Party* (D.C. Cir. 1975) 525 F.2d 567, responding to the assertion that "no such national [Republican] party is formally constituted under any state or federal law, and that the term is merely a collective description of the individual state and territorial Republican Parties," the court said:

> "We know, either from the record or through judicial notice, that there is commonly understood to be a National Republican Party, that it is commonly referred to, and contributed to, as such, that it meets quadrennially in a national convention, and that at the last such convention it formally declared itself 'a nationwide Party,' whose 'general management' it entrusted to the Republican National Committee 'subject to direction from time to time of the National Convention.'" (*id.*, at pp. 571-572, fn. 5.)

Groups which have been included as unincorporated associations in addition to labor unions (*United Mine Workers of America* v. *Coronado Coal Co.* (1922) 259 U.S. 344 [42 S.Ct. 570]; *Juneau Spruce Corp.* v. *I. L. & W. Union* (1953) 119 Cal. App.2d 144) and political parties are social clubs, religious organizations, environmental societies, athletic organizations, condominium owners, lodges, stock exchanges and veterans.[5] The criteria applied to determine whether

[5] See, for example, ***Moose Lodge No. 107*** v. ***Irvis*** (1972) 407 U.S. 163 [92 S.Ct. 1965] (social club); ***Presbyterian Ch.*** v. ***Mary E. B. Hull Mem. Pres. Ch.*** (1969) 393 U.S. 440 [89 S.Ct. 601] (church); ***Alyska Pipeline Service Co.*** v. ***Wilderness Society*** (1975) 421 U.S. 240 [95 S.Ct. 1612]; ***Friends of Mammoth*** v. ***Board of Supervisors*** (1972) 8 Cal. 3d 247 (environmental societies); ***California State University, Hayward*** v. ***National Collegiate Athletic Assn.*** (1975) 47 Cal. App. 3d 533 (athletic organization); ***White*** v. ***Cox*** (1971) 17 Cal. App. 3d 824 (condominium owners); ***Herald*** v. ***Glendale Lodge, supra,*** 46 Cal. App. 325 (lodge); ***Jardine*** v. ***Superior Court, supra,*** 213 Cal. 301 (stock exchange); and ***Schlesinger*** v. ***Reservists Committee To Stop The War*** (1974) 418 U.S. 208 [94 S.Ct. 2925] (veterans).

an entity is an unincorporated association are no more complicated than (1) a group whose members share a common purpose, and (2) who function under a common name under circumstances where fairness requires the group be recognized as a legal entity. Fairness includes those situations where persons dealing with the association contend their legal rights have been violated. (See *Operative Plasterers', Etc., Assn.* v. *Case* (D.C. Cir. 1937) 93 F.2d 56, 65.) Formalities of quasi-corporate organization are not required (*Law* v. *Crist* (1940) 41 Cal. App.2d 862, 865; *Estate of Irwin* (1925) 196 Cal. 366, 372.) Courts have even assessed liability against a church association with no officers where there were only nine persons whose sole business transaction (aside from small purchases of printed religious material) was the purchase, by down payment, of a station wagon. (*Steuer* v. *Phelps* (1974) 41 Cal. App.3d 468).

UMC contends an essential element for legal status, the creation of associate liability in furtherance of the common purpose (*Jardine* v. *Superior Court, supra,* 213 Cal. 301, 317) is absent in the instant case because *all* members and connected bodies of the denomination have not delegated agency authority to Pacific Homes to act on behalf of UMC. This circuitous argument, however, assumes actual agency must be conferred on Pacific Homes before any defendant can be liable. Whether Pacific Homes had actual authority to act on behalf of UMC is unnecessary for the application of doctrines relating to either alter ego or agency. To hold otherwise would permit an unincorporated association to escape liability by the simple technique of requiring express consent from all units of the association.

The Organization of UMC

In resolving intra-church schisms or property disputes, courts have identified at least two categories of church

polities;[6] congregational and hierarchal. (See gen., *Watson* v. *Jones* (1872) 80 U.S. 679, 722 [74-81 S.Ct. 666]; *Kedroff* v. *St. Nicholas Cathedral of Russian O. Ch.* (1952) 344 U.S. 94 [73 S.Ct. 143].) UMC is not congregational, i.e., the local church is not the highest authority in all matters of doctrine and usage. It is hierarchal; the 43,000 local churches and 114 Annual Conferences are governed through the structure described by the Book of Discipline of the United Methodist Church (Discipline).[7] In United Methodism, "the local church is a part of the whole body of the general church and is subject to the higher authority of the organization and its laws and regulations." (*Carnes* v. *Smith* (1976) 222 S.E.2d 322, 325, cert. den. 429 U.S. 868.)

> "The Methodist Church . . . is a connectional church, governed by representative bodies, with an episcopacy whose powers and duties are constitutionally defined. It has an itinerant ministry in that its ministers are assigned by officials of The Methodist Church and are not called by local societies or subject to the control or discipline of local societies. The basic representative body of The Methodist Church is the Annual Conference made up of ministerial and lay delegates from local societies in each area embraced within an Annual Conference. An Annual Conference is divided for purposes of administration into Districts. The administration of a District is entrusted to a District Superintendent. The General Conference of the Methodist Church, made up of delegates from each Annual Conference of the Church, is the highest legislative body of the Church, determining the ecclesiastical and temporal policies of the Church. The Judicial Council is the highest judicatory body of the Church, deciding appeals taken on legal issues raised within the Church. The Discipline of The Methodist Church is the book of law of the Church containing the Articles of Religion, the Constitution, the rules of the church concerning the moral conduct of its members, and the legislation of the various General Conferences defining the form of government, the duties, powers and privileges of the members, ministers and various bodies of the Church, including the law of the Church with reference to the acquisition, conveyancing and alienation of real estate." (*Goodson* v. *Northside Bible Church* (1966) 261 F.Supp. 99, 101.)

UMC may be unique in that it has no single chief operating officer, but the clearly defined operating and conceptual levels of responsibility starting with the General Conference, "[t]he legislative body for the entire Church" (Discipline, Glossary, p. 598), the Annual Conference, the District Conference, the Charge Conference, the Local Church Conference and the local church cannot be ignored. Moreover, a persuasive argument can be made that the Council of Bishops is equivalent to the board of directors of UMC. According to the Book of Discipline, the "Council of Bishops is thus the corporate expression of episcopal leadership in the Church" which is required "to meet at stated intervals" in order to oversee "the spiritual and temporal affairs of the whole Church." (Discipline, par. 525.)

Control over the local church ranging from the restrictions on purchase or sale of estate which requires authorization from the Charge Conference and the written consent of the pastor and district superintendent (Discipline, par. 2429, 2431, 2433, pp. 547-549) to the selection of local church

[6] "Polity refers to the general governmental structure of a church, the organs of authority and the allocation and locus of its judicatory powers as defined by its own organic law." (*Brady* v. *Reiner* (1973) 198 S.E.2d 812, 827; see also Note, *Judicial Intervention in Disputes Over the Use of Church Property* (1962) 75 Harv. L. Rev. 1142, 1143-1144.)

[7] "The content of the Discipline changes quadrennially. The concept of the Discipline as setting forth the plan, polity and process by which United Methodists govern themselves remains constant . . ." (Discipline (1976) Episcopal Greetings, p. v.)

pastors is more reflective of a single entity than completely autonomous and independent units.

The day to day operation of UMC is in keeping with the reality of its organization. The GCFA, characterized by UMC in this appeal as merely a non-discretionary conduit rendering non-discretionary auditing and financial service to some of the general level agencies with United Methodism, has in fact held itself out somewhat differently. In applying for a group exemption under section 501(c) of the Internal Revenue Code of 1954, GCFA described itself as "the central treasury and fiscal agent of the United Methodist Church. The Council has been established by the General Conference to act as its finance committee and accordingly its duties are legislated in Paragraphs 837-865 of the Book of Discipline." In that application, the GCFA made reference to paragraph 843.3 of Discipline which authorizes GCFA "to take all necessary legal steps to safeguard and protect the interest and rights of the United Methodist Church." A reasonable legal inference which can be drawn from this grant and description of authority to an agent is the existence of UMC as principal. This is particularly true where that agent, in addition to being accountable for "all matters relating to the receiving, disbursing, and reporting of general church funds"[8] (Discipline, par. 906, p. 333); is required "[t]o take all necessary legal steps to safeguard and protect the interests and rights of The United Methodist Church; to maintain a file of legal briefs related to cases involving The United Methodist Church, and to make provisions for legal counsel where necessary in

[8] Approximately five and one-half percent of total member contributions are given annually to GCFA. In "What Happens To All That Money?" (1977 ed.) United Methodist Communications, Dr. Ewing T. Wayland, described as the treasurer of UMC, said: "In 1975, United Methodists giving to the support of the general church totaled $58,155,600—5.38 percent of the total amount paid by local churches for all purposes." (at p. 5)

order to protect the interests of the Church at the request of a general agency or a bishop, as the Council deems advisable." (Discipline, par. 907, subpar. 4, pp. 338-339). In addition to the cases cited previously (*Carnes* v. *Smith, supra,* 222 S.E. 2d 322; *Brady* v. *Reiner, supra,* 198 S.E. 2d 812; *Goodson* v. *Northside Bible Church, supra,* 261 F.Supp. 99, affd. 387 F.2d 534 (5th Cir. 1967)), UMC has appeared as principal in other litigation. (See *United Meth. Ch.* v. *St. Louis Crossing Ind. Meth. Ch.* (1972) 276 N.E. 2d 916; The United Methodist Church, Dr. McCoy Johnson, in his representative capacity as the District Superintendent of the American District of the South Georgia Annual Conference, etc. v. J. W. Sparrow, Civil Action No. 6881 (Superior Court of Dooly Co., Georgia, 1976).)[9] Other cases in which an agency of the UMC has been involved reiterate the hierarchal and organizational structure of Methodism. (See, e.g. *Hoffman* v. *Tieton View Community M. E. Church* (1949) 34 Wash. 2d 83, 207 P.2d 699, 705-706; *Trustees of Peninsula Annual Conference* v. *Spencer* (1962) 183 A.2d 588, 589; *Turbeville* v. *Morris* (1943) 203 S.C. 287, 26 S.E. 2d 821, 825.)

The possibility of UMC's liability has not gone unnoticed by those responsible for insurance coverage. UMC is a named insured on a high limit contract of insurance commencing June 1, 1976 to June 1, 1979, with a broad range of fidelity, casualty, property, fire, theft, medical malpractice and comprehensive general liability coverage. The policy as issued describes UMC as a corporation engaged in business as a religious organization.

[9] We are aware that counsel for UMC in the Georgia case filed his affidavit indicating the decison to include UMC as plaintiff was his alone. Whether actually authorized or not, the belief by UMC's own lawyer as to the jural status of UMC is certainly relevant to our inquiry.

In summary, UMC is a highly organized religious body working through specific agencies to accomplish laudable goals.

The Relationship Between Pacific Homes and UMC Requires UMC be Recognized as a Legal Entity

Before we examine the circumstances surrounding the activities of Pacific Homes and the alleged involvement of UMC, we wish to stress that our decision in the pleading phase of this litigation does not imply any lack of compassion by UMC or infer liability on its part. Our holding based upon neutral principles of law simply determines UMC is suable. What the outcome of that suit will be or should be is not before us.

Pacific Homes, a non-profit organization, was formed in 1929 by the Southern California Annual Conference (the predecessor of the PSWAC) of the Methodist Episcopal Church. Amended Articles of Incorporation signed in January 1929 expressly provided that the powers of the corporation subject to California law shall be "subject to the uses and Discipline of The Methodist Church as from time to time authorized and declared by the General Conference of said Church and by the Annual Conference within whose bounds the said corporation is located." The articles also provided that before either voluntary or involuntary dissolution, the corporate assets shall be subject to the Annual Conference of the Methodist Church or its successors; bylaws adopted or amended shall not be inconsistent with the Book of Discipline; and membership in the corporation was restricted to the Southern California-Arizona Annual Conference of the Methodist Church.

The relationship between Pacific Homes and UMC has continued since 1929 in a similar fashion. Through the years, the Board of Directors of Pacific Homes has been

either appointed by the Methodist Church's Annual Conference in Southern California or composed of Methodist ministers and lay persons of the Annual Conference.

In the first List of Hospitals and Homes of The Methodist Church published in 1967 by the Methodist Health and Welfare Certification Council of the Board of Hospitals and Homes of the Methodist Church, Pacific Homes was given affiliate status, the highest level attainable for that year. In addition to its relationship with UMC, certification established the quality of services rendered by Pacific Homes met the minimum basic standards for professional health and welfare services recognized by the General Board of Hospitals and Homes of the Methodist Church. Until financial difficulties started, the successful performance by Pacific Homes was pointed to with pride over a number of years in many public statements by the President of UMC's Council of Bishops.

The literature prepared by Pacific Homes distributed to persons interested in either a convalescent hospital or a retirement residence expressly stated that Pacific Homes was an agency of the United Methodist Church Southern California-Arizona Conference. In describing the cost, Pacific Homes referred to itself as being sponsored by the Southern California-Arizona Conference of the United Methodist Church and offered a special program of assistance to help a limited number of United Methodists.

Plaintiffs' complaint mirrors the literature of Pacific Homes alleging agency, sponsorship and control over Pacific Homes.

The events referred to in the pleadings and described in the documents presented to the trial court refer to activities which not only involve spiritual concerns relating to the health and welfare of either the elderly or infirm, but

which are commercial activities. The costs for lodging and the type of accommodations are primarily business decisions. UMC, in fulfilling its commitment to society, has elected to involve itself in worldly activities by participating in many socially valuable projects. It has enjoyed the benefits, both economic and spiritual, of those projects. It has even on occasion filed suit for the protection of its interests. It must now, as part of its involvement in society, be amenable to suit.

Due Process of Law Does Not Preclude UMC From Being Sued

UMC argues the due process implications of this case are inescapable. If suit against UMC is permitted, the assets of the scores of thousands of United Methodist institutions throughout the world having no contacts with either California or Pacific Homes will be subject to levy—a constitutionally impermissible result because distant Methodist units would have been unable to defend themselves on the merits of the controversy.

The complexities, both legal and factual, in the present litigation are immense. To add a constitutional requirement, however, that before UMC can be recognized as an entity, plaintiffs must also identify each asset that may be reached to assure the absence of any third party claim in that asset, is to create an issue where one does not exist. We recognize the inextricable relationship between obtaining a judgment and having it satisfied; nevertheless, to adjudicate questions on ownership of property before judgment is essentially a reversal in the process of litigation.

The due process issue described by UMC is reflected in Code of Civil Procedure section 388, subdivision (b), which provides:

> "Any member of the partnership or other unincorporated association may be joined as a party in an action against the unincorporated association. If service of process is made on such member as an individual, whether or not he is also served as a person upon whom service is made on behalf of the unincorporated association, a judgment against him based on his personal liability may be obtained in the action, whether such liability may be joint, joint and several, or several."

Before any liability can be assessed against any person, service of process on the individual in his individual capacity must be made. Plaintiffs concede that no individual has been sued by virtue of membership in the UMC. California Corporations Code section 24002 provides: "Only the property of an unincorporated association may be levied upon under a writ of execution issued to enforce a judgment against the association." Corporations Code section 21102 provides further that:

> "No presumption or inference existed prior to September 15, 1945, or exists after that date, that a member of a nonprofit association has consented or agreed to the incurring of any obligation by the association, from the fact of joining or being a member of the association, or signing its by-laws."

An action against an association sued in its common name is an action against a single defendant. (*Potts* v. *Whitson* (1942) 52 Cal. App. 2d 199, 205.) California statutes provide due process safeguards in those situations unlike the case at bench where liability is sought to be imposed against indidvdual units of the UMC neither named as a party nor served.

The Action Against UMC Does not Violate the Free Exercise and Establishment of Religion Provisions of the United States and California Constitutions

We have previously stated that UMC's status in the context of this appeal is a question of law, thus rejecting the

ecclesiastical expertise furnished by persons knowledgeable in the history, development and faith of United Methodism. Whether we may do so is challenged by UMC under both the Federal and State Constitutions.[10] UMC contends the First and Fourteenth Amendments prevent a civil court from independently examining its polity to conclude it is suable contrary to church doctrine.

There are situations specifically in internal church disputes where civil courts are required to accept the decision of the highest body of the church.

> "[T]he First and Fourteenth Amendments permit hierarchal religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them. (*Serbian Eastern Orthodox Diocese* v. *Milivojevich* (1976) 426 U.S. 696, 724-725)

This rule, however, has not been extended into secular disputes. Clearly the present case is secular. To defer absolutely to authoritative church experts would be to grant

[10] Amendment I of the U. S. Constitution provides in pertinent part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

Article I, section 4 of the California Constitution provides in pertinent part:

> "Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion."

immunity to religious organizations in cases which might arise far afield from religious activities with the resultant effect that civil courts would then be subordinated to organizations which might attempt to classify themselves as religious to obtain the benefits of the shield of First Amendment protection.

California cases addressing this issue outside the realm of intra-church disputes have held that civil courts are not bound by a church's constitution or its ecclesiastical doctrine. (*Queen of Angels Hospital* v. *Younger* (1977) 66 Cal. App. 3d 359, 372; *In re Metropolitan Baptist Church of Richmond, Inc.* (1975) 48 Cal. App. 3d 850, 859.)

To hold UMC suable is not equivalent to a review of its polity thus interfering with its internal affairs in violation of the free exercise clause of the First Amendment. There is no evidence to show that rendering UMC amenable to suit would affect the distribution of power or property within the denomination, would modify or interfere with the modes of worship affected by Methodists or would have any effect other than to oblige UMC to defend itself when sued upon civil obligations it is alleged to have incurred. The cases involving UMC entities previously cited eliminates any idea there may be religious prohibitions to participation in civil litigation.

We are keenly aware of the church-state separation articulated both in our State Constitution (see *Fox* v. *City of Los Angeles* (1978) 22 Cal. 3d 792, 799-806, conc. opn. of Bird, C.J.) and Federal Constitution. We have kept firmly in mind the clauses pertaining to religious freedom are aimed at preserving government neutrality in matters pertaining to religion while securing religious goals free of government restraints. We have considered each clause forbids two quite different kinds of governmental encroachment

upon religious freedom. (See *Engle* v. *Vitale* (1962) 370 U.S. 421, 430 [82 S.Ct. 126]; see also *School District of Abington Tp., Pa.* v. *Shempp* (1936) 374 U.S. 203, 221 [83 S.Ct. 1560].) Nevertheless, nothing either our State or Federal Supreme Court has said has even remotely implied that "under the cloak of religion, persons may, with impunity, commit fraud upon the public." (*Cantwell* v. *State of Connecticut* (1940) 310 U.S. 296, 306 [60 S.Ct. 900].) The free exercise clause of the First Amendment which assumes the absolute freedom to believe does not grant absolute freedom to act. Conduct remains subject to regulation for the protection of society. (*Cantwell, supra,* at pp. 303-304.) Conduct, albeit based upon religious motivation, may be restricted by neutral legislation. (*Braunfeld* v. *Brown* (1961) 336 U.S. 599, 603 [81 S.Ct. 1144]; *Reynolds* v. *United States* (1879) 98 U.S. 145 [95-105 S.Ct. 244].) To permit unbridled behavior "would be to make the professed religious belief superior to the law of the land, and in effect, to permit every citizen to become a law onto himself. Government could exist only in name under such circumstances." (*id.,* at pp. 166-167.) To apply a different standard to determine the jural status of religious organizations as opposed to non-religious organizations in purely secular suits might very well constitute a preference for religion in violation of the establishment clause. (*School District of Abington Tp., Pa.* v. *Shempp, supra,* 374 U.S. 203.)

The trial court order reflected the concern that if individual members of a church were to be liable there would be a chilling effect on church membership. This concern, legitimate as it may be, is properly placed with the religious body to consider before becoming involved in commercial affairs and is not a consideration which may be considered in our resolution of the issue before us. A religious organization should not be relieved of its lawful obligations arising

out of secular activities because the satisfaction of those obligations may, in some tangential fashion, discourage religious activities. (See *Gospel Army* v. *City of Los Angeles* (1945) 27 Cal. 2d 232, 241-247.)

The statutory enactments involved in this action are for the purpose of providing substantive rights to citizens and to assure access to the courts, including the right to sue organizations functioning as unincorporated associations. The internal ecclesiastical judicial system of UMC does not provide any method of redress for plaintiffs. The use of the courts as a method of dispute resolution cannot be foreclosed to this class of plaintiffs who have alleged fraud, breach of contract and statutory violations because one of the named defendants is a religious body. Neither the State nor Federal Constitution may be interpreted in a manner which would deny plaintiffs the right to sue UMC.

Judgment reversed.

CERTIFIED FOR PUBLICATION.

Wiener
J.

WE CONCUR:

Staniforth
Acting P.J.

Ehrenfreund
J.*

* Judge of the Superior Court of San Diego County sitting under assignment by the Chairperson of the Judicial Council.

APPENDIX B

Minute Order Decision

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

FRANK T. BARR, et al., Plaintiffs, vs. THE UNITED METHODIST CHURCH, et al., Defendants.	No. 404611 MINUTE ORDER

THE UNITED METHODIST CHURCH

The "United Methodist Church" is an international religious denomination consisting of over 10,000,000 persons who worship in some 43,000 churches and missions throughout the world. The "United Methodist Church" is a "connectional" structure maintained through a chain and series of periodic conferences. It has never been incorporated.

A respected unbiased source, "The Encyclopedia Britannica", 1959 Ed., Vol. 15, p. 358, states: "Methodism has continued for more than two centuries to proclaim a freedom of spirit as opposed to the bondage of an organization, and its appeal has been based on the reality of a personal experience of spiritual emancipation through faith in Christ."

The Court rules that: "The United Methodist Church" is no more than a "spiritual confederation" and is not a jural entity or unincorporated association subject to suit under Code of Civil Procedure 388. A contrary ruling would effectively destroy Methodism in this country, and would have a chilling effect on all churches and religious move-

ments by inhibiting the free association of persons of similar religious beliefs. If all members of a particular faith were to be held personally liable for the transgressions of their fellow churchmen, church pews would soon be empty and the pulpits of America silent.

Accordingly, the motion to quash service of process on "The United Methodist Church" is granted.

* * * *

/s/ Ross G. Tharp
Judge of the Superior Court

APPENDIX C

COURT OF APPEAL—STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

COURT OF APPEAL, FOURTH DIST.
MAR. 29 1979
ROBERT L. FORD, Clerk
R. J. SMITH
DEPUTY CLERK

FRANK T. BARR, et al., Plaintiffs-Appellants, vs. THE UNITED METHODIST CHURCH, et al., Defendants-Respondents.	4 Civil No. 18244 Superior Court No. 404611

BY THE COURT

The petition for rehearing is denied.

The following corrections are made:

Page 1, line 5 from bottom, "Le'Estrange" should be "L'Estrange."

Page 1, line 2 from bottom, omit "Musick, Peeler & Garrett, William McD. Miller III and Wayne B. Littlefield; Hughes, Hubbard & Reed, William H. Levit, Jr."

Page 2, line 1, omit "and John H. Blue". Page 2, line 3, omit "Defend..nt and Respondent" and insert "National Council of Churches of Christ of United States of America." Page 2, line 5, delete "Kadison, Pfaelzer, Woodard, Quinn & Rossi and Allen Woodard."

Page 6, line 8, "t" should be "T" in "The Book of Discipline . . ."

Page 8, line 5 from bottom, should read ". . . cert. den. 404 U.S. 858 (Oct. 12, 1971), . . ."

Page 13, line 7, insert "real"; ". . . sale of real estate . . ."

Page 15, line 2, delete "Methodism" and insert "UMC."
Page 22, line 5, delete period after "freedom," lowercase "s" in "(See," delete period after "1560]," and lowercase "n" in "Nevertheless."

Staniforth
Acting Presiding Justice

Copies to:

Witwer, Moran, Burlage & Atkinson—Chicago	
Sullivan, Jones & Archer—SD	L.A.D.J.
Musick, Peeler & Garrett—LA	B.W.
O'Melveny & Myers—LA	Trial Judge
Tuttle & Taylor—LA	L.A. County Law Lib.
Wied, Granby & Alford—SD	S.D. County Law Lib.
Milberg, Weiss, Bershad & Specthrie—SD	The D.T.
Superior Court—SD	
West Publ. Co.	

APPENDIX D

CLERK'S OFFICE, SUPREME COURT
4250 State Building
San Francisco, California 94102

May 17, 1979

I have this day filed Order

HEARING DENIED

In re: 4 Civ. No. 18244
Barr et al.,

vs.

United Methodist Church, et al.

Respectfully,

G. E. BISHEL
Clerk

APPENDIX E

THE UNITED METHODIST CHURCH
Judicial Council

PRESIDENT
TOM MATHENY
P.O. Box 221
Hammond, Louisiana 70401

VICE PRESIDENT
TRUMAN W. POTTER
919 Chappell Road
Charleston, W. Va. 25304

SECRETARY
HOOVER RUPERT
212 South Park Street
Kalamazoo, Michigan 49006

As Secretary of the Judicial Council of the United Methodist Church, I certify that the following decision was rendered by the Council in session May 25, 1979 in Chicago, Illinois:

IN RE: AUTHORITY OF THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION TO REPRESENT THE UNITED METHODIST CHURCH IN LITIGATION.

DECISION: Paragraph 907.4 of the *1976 Discipline* does not delegate to the General Council on Administration and Finance either the authority or the duty to sue, or to file an answer or to otherwise plead, on behalf of the United Methodist Church as a denomination.

This is Decision No. 458 of the Judicial Council, and is dated in our records, May 25, 1979.

DR. HOOVER RUPERT
Secretary, The Judicial Council
The United Methodist Church

Certified, May 29, 1979.
Kalamazoo, Michigan

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APPENDIX F

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Attorneys For The Persons Upon Whom Service Of Process Was Attempted On Behalf Of The United Methodist Church

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

FRANK T. BARR, et al., *Plaintiffs,* vs. THE UNITED METHODIST CHURCH, et al., *Defendants.* — GEORGE HALL, et al., *Intervenors,* vs. THE UNITED METHODIST CHURCH, et al., *Defendants In Intervention.*	No. 404611 ANSWER TO CONSOLIDATED AMENDED COMPLAINT

PAUL W. MILHOUSE, CHARLES F. GOLDEN and JAMES M. WALTON-MYERS, on their motion to quash

having been determined by the California courts to be representatives of the alleged unincorporated association described and designated in Paragraph 2 of the Consolidated Amended Complaint as "The United Methodist Church," while continuing to deny that they are such representatives, and denying that the United Methodist religious denomination has capacity or duty to answer as an unincorporated association under its polity and ecclesiastical law, or under the due process and freedom of religion protections afforded by the California Constitution and the First, Fifth and Fourteenth Amendments to the Constitution of the United States, now cause "The United Methodist Church," as described in Paragraph 2 of the Consolidated Amended Complaint, not voluntarily but under protest, solely to comply with the mandate of the civil courts of California and to avoid the entry of a default, to answer as follows:

Pursuant to California Code of Civil Procedure, ¶ 431.30, each and every allegation of the Consolidated Amended Complaint ("Complaint") is denied.

AFFIRMATIVE DEFENSES

Without waiving the general denial set forth above and continuing to deny each and every allegation of the Complaint, the following affirmative defenses are asserted:

FIRST AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION

1. By its written opinion on March 8, 1979, in *Barr* v. *United Methodist Church,* 90 Cal. App. 3d 259, 153 Cal. Rptr. 322, the California Court of Appeal, Fourth Appellate District, Division One, reinstated The United Methodist Church as a named defendant in this action, holding that it can be sued as an unincorporated association. The California Supreme Court denied hearing on May 17, 1979.

2. On May 25, 1979, the Judicial Council of The United Methodist Church ruled that neither the General Council on Finance and Administration of The United Methodist Church, nor any other person, is empowered to answer, or otherwise appear in legal proceedings on behalf of the United Methodist denomination as a totality, since the chosen polity of that denomination is not centrally directed, and, under the constitution of United Methodism (*The Book of Discipline,* at Paragraph 612), no person or unit may presume to officially represent, speak for or bind the thousands of separate religious units comprising the denomination. A copy of the Slip Opinion of the Judicial Council, now in the process of printing and publication, is attached hereto marked Exhibit "A", and incorporated by reference herein.

3. Upon application by the individuals served, the Superior Court for the County of San Diego granted the named denominational defendant an extension of time to plead until July 2, 1979.

4. Given their understanding that none of them is empowered to receive service of process on behalf of The United Methodist Church, that they are unable to speak for the denomination, and that the denomination, because of the nature of its chosen polity, lacks capacity to litigate as a unity and legal entity, the individuals served on behalf of The United Methodist Church are in the process of preparing a Petition For Writ Of Certiorari for filing in the United States Supreme Court, seeking review of the California appellate decision that The United Methodist Church can be sued as an unincorporated association. That petition will assert that The United Methodist Church is an international religious denomination and spiritual confederation but is not, either under ecclesiastical law or under federal or state constitutional principles, a single legal entity.

5. The conflict between the chosen religious polity and ecclesiastical law of United Methodism and the decision of the Fourth Appellate District, Division One, of the California Court of Appeal, must be resolved after July 2, 1979, the last day the Superior Court will allow The United Methodist Church to file responsive pleadings. The individuals served are not prepared to allow The United Methodist Church to suffer entry of a default in a case alleged to involve hundreds of millions of dollars in damages, solely because they honestly and steadfastly believe they have no authority to speak for the denomination, and that the denomination lacks capacity to litigate as a single entity.

6. The individuals served, therefore, file this Answer under protest. The requirement that they submit an answer on behalf of The United Methodist Church violates the due process of law and freedom of religion provisions of the California Constitution and the First, Fifth and Fourteenth Amendments to the United States Constitution. All jurisdictional objections which have been tendered to the civil courts to date, including, without limitation (a) matters which may be raised upon Petition For Writ of Certiorari in the United States Supreme Court, described in Paragraph 4 hereinabove, and (b) any post-judgment review herein which may become appropriate, are specifically reserved.

SECOND AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION

7. The allegations of paragraphs 1 through 5 of the First Affirmative Defense are referred to and incorporated by reference herein as though fully set forth.

8. The requirement that The United Methodist Church be restructured and its ecclesiastical law be ignored so as to conduct litigation as a monolithic unit, rather than pre-

serving the denomination's integrity as a spiritual confederation is objected to. The individuals served specifically disclaim the capacity of The United Methodist Church to be or become an unincorporated association. Such interpretation and requirement is violative of the due process of law and freedom of religion provisions of the California Constitution and the First, Fifth and Fourteenth Amendments to the United States Constitution.

THIRD AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION

9. The allegations of paragraphs 1 through 5 of the First Affirmative Defense are referred to and incorporated by reference herein as though fully set forth.

10. Neither the individuals nor the purported unincorporated association, The United Methodist Church, as described in Paragraph 2 of the Complaint possess (a) any authority to speak for or represent, or (b) any power to issue directions to the following constituent units and persons of United Methodism which have separate identities, substantial autonomy, and their own distinct decision making mechanisms:

a. Approximately ten million individual adherents of United Methodism throughout the world;

b. Local Churches; a total of approximately 39,000 in the United States, and approximately 4,400 overseas;

c. Jurisdictional and Central Conferences; Five Jurisdictional Conferences as follows:

NORTH CENTRAL JURISDICTION (U.S.)
NORTHEASTERN JURISDICTION (U.S.)
SOUTH CENTRAL JURISDICTION (U.S.)
SOUTHEASTERN JURISDICTION (U.S.)
WESTERN JURISDICTION (U.S.)

Nine overseas Central Conferences, as follows:

AFRICA CENTRAL CONFERENCE
LIBERIA CENTRAL CONFERENCE
CHINA CENTRAL CONFERENCE
CENTRAL AND SOUTHERN EUROPE CENTRAL CONFERENCE
CENTRAL CONFERENCE IN THE GERMAN DEMOCRATIC REPUBLIC
CENTRAL CONFERENCE IN THE FEDERAL REPUBLIC OF GERMANY AND WEST BERLIN
NORTHERN EUROPE CENTRAL CONFERENCE
SOUTHEAST ASIA-PHILIPPINE CENTRAL CONFERENCE
SOUTHERN ASIA CENTRAL CONFERENCE

d. Annual Conferences: A total of seventy-three (73) in the United States as follows:

PACIFIC AND SOUTHWEST ANNUAL CONFERENCE ("PSWAC"), a California not-for-profit corporation, named as a defendant herein and represented by its own counsel, ALABAMA-WEST FLORIDA ANNUAL CONFERENCE, ALASKA MISSIONARY ANNUAL CONFERENCE, BALTIMORE ANNUAL CONFERENCE, CALIFORNIA-NEVADA ANNUAL CONFERENCE, CENTRAL ILLINOIS ANNUAL CONFERENCE, CENTRAL NEW YORK ANNUAL CONFERENCE, CENTRAL PENNSYLVANIA ANNUAL CONFERENCE, CENTRAL TEXAS ANNUAL CONFERENCE, DETROIT ANNUAL CONFERENCE, EAST OHIO ANNUAL CONFERENCE, EASTERN PENNSYLVANIA ANNUAL CONFERENCE, FLORIDA ANNUAL CONFERENCE, HOUSTON ANNUAL CONFERENCE, IOWA AN-

NUAL CONFERENCE, KANSAS-EAST ANNUAL CONFERENCE, KANSAS WEST ANNUAL CONFERENCE, KENTUCKY ANNUAL CONFERENCE, LITTLE ROCK ANNUAL CONFERENCE, LOUISIANA ANNUAL CONFERENCE, LOUISVILLE ANNUAL CONFERENCE, MAINE ANNUAL CONFERENCE, MEMPHIS ANNUAL CONFERENCE, MINNESOTA ANNUAL CONFERENCE, MISSISSIPPI ANNUAL CONFERENCE, MISSOURI-EAST ANNUAL CONFERENCE, MISSOURI-WEST ANNUAL CONFERENCE, NEBRASKA ANNUAL CONFERENCE, NEW HAMPSHIRE ANNUAL CONFERENCE, NEW MEXICO ANNUAL CONFERENCE, NEW YORK ANNUAL CONFERENCE, NORTH ALABAMA ANNUAL CONFERENCE, NORTH ARKANSAS ANNUAL CONFERENCE, NORTH CAROLINA ANNUAL CONFERENCE, NORTH DAKOTA ANNUAL CONFERENCE, NORTH GEORGIA ANNUAL CONFERENCE, NORTH INDIANA ANNUAL CONFERENCE, NORTH MISSISSIPPI ANNUAL CONFERENCE, NORTH TEXAS ANNUAL CONFERENCE, NORTHERN ILLINOIS ANNUAL CONFERENCE, NORTHERN NEW JERSEY ANNUAL CONFERENCE, NORTHERN NEW YORK ANNUAL CONFERENCE, NORTHWEST TEXAS ANNUAL CONFERENCE, OKLAHOMA ANNUAL CONFERENCE, OKLAHOMA INDIAN MISSIONARY ANNUAL CONFERENCE, OREGON-IDAHO ANNUAL CONFERENCE, PACIFIC NORTHWEST ANNUAL CONFERENCE, PENINSULA ANNUAL CONFERENCE, PUERTO RICO ANNUAL CONFERENCE, RED BIRD MISSIONARY ANNUAL CONFERENCE, RIO GRANDE ANNUAL CONFERENCE, ROCKY MOUNTAIN ANNUAL CONFERENCE, SOUTH CAROLINA ANNUAL

CONFERENCE, SOUTH DAKOTA ANNUAL CONFERENCE, SOUTH GEORGIA ANNUAL CONFERENCE, SOUTH INDIANA ANNUAL CONFERENCE, SOUTHERN ILLINOIS ANNUAL CONFERENCE, SOUTHERN NEW ENGLAND ANNUAL CONFERENCE, SOUTHERN NEW JERSEY ANNUAL CONFERENCE, SOUTHWEST TEXAS ANNUAL CONFERENCE, TENNESSEE ANNUAL CONFERENCE, TEXAS ANNUAL CONFERENCE, TROY ANNUAL CONFERENCE, VIRGINIA ANNUAL CONFERENCE, WEST MICHIGAN ANNUAL CONFERENCE, WEST OHIO ANNUAL CONFERENCE, WEST VIRGINIA ANNUAL CONFERENCE, WESTERN NEW YORK ANNUAL CONFERENCE, WESTERN NORTH CAROLINA ANNUAL CONFERENCE, WESTERN PENNSYLVANIA ANNUAL CONFERENCE, WISCONSIN ANNUAL CONFERENCE, WYOMING ANNUAL CONFERENCE, YELLOWSTONE ANNUAL CONFERENCE.

A total of 43 overseas Annual Conferences as follows:

ANGOLA ANNUAL CONFERENCE
CENTRAL ZAIRE ANNUAL CONFERENCE
NORTH SHALA ANNUAL CONFERENCE
RHODESIA ANNUAL CONFERENCE
SOUTHEAST AFRICA ANNUAL CONFERENCE
SOUTHERN ZAIRE ANNUAL CONFERENCE
LIBERIA ANNUAL CONFERENCE
CHINA MAINLAND CONFERENCES
AUSTRIA PROVISIONAL CONFERENCE
BULGARIA PROVISIONAL CONFERENCE
CZECHOSLOVAKIA ANNUAL CONFERENCE
HUNGARY PROVISIONAL CONFERENCE
POLAND ANNUAL CONFERENCE

SWITZERLAND-FRANCE ANNUAL CONFERENCE
YUGOSLAVIA PROVISIONAL CONFERENCE
GERMAN DEMOCRATIC REPUBLIC ANNUAL CONFERENCE
GERMAN NORTHWEST ANNUAL CONFERENCE
GERMAN SOUTH ANNUAL CONFERENCE
GERMAN SOUTHWEST ANNUAL CONFERENCE
BALTIC PROVISIONAL CONFERENCE
DENMARK ANNUAL CONFERENCE
FINLAND-FINNISH PROVISIONAL CONFERENCE
FINLAND-SWEDISH PROVISIONAL CONFERENCE
NORWAY ANNUAL CONFERENCE
SWEDEN ANNUAL CONFERENCE
MIDDLE PHILIPPINES ANNUAL CONFERENCE
MINDANAO ANNUAL CONFERENCE
NORTHEAST PHILIPPINES ANNUAL CONFERENCE
NORTHWEST PHILIPPINES ANNUAL CONFERENCE
PHILIPPINES ANNUAL CONFERENCE
SOUTHWEST PHILIPPINES ANNUAL CONFERENCE
AGRA ANNUAL CONFERENCE
BENGAL ANNUAL CONFERENCE
BOMBAY ANNUAL CONFERENCE
DELHI ANNUAL CONFERENCE
GUJARAT ANNUAL CONFERENCE
HYDERABAD ANNUAL CONFERENCE
KLUCKNOW ANNUAL CONFERENCE
MADHYA PRADESH ANNUAL CONFERENCE
MORADABAD ANNUAL CONFERENCE
NORTH INDIA ANNUAL CONFERENCE
SOUTH INDIA ANNUAL CONFERENCE

e. Annual Conference-related institutions numbering approximately 542, and including homes, hospitals, orphanages, day-care centers, colleges, and seminaries;

f. The general-level boards and agencies of United Methodism, as follows: The General Council on Finance and Administration of The United Methodist Church ("GCFA"), an Illinois not-for-profit corporation, named as a defendant herein and represented by counsel; The Board of Global Ministries of The United Methodist Church, a New York not-for-profit corporation, named as a defendant herein and represented by counsel; The Health & Welfare Ministries Division of the Board of Global Ministries of The United Methodist Church, an Illinois not-for-profit corporation, named as a defendant herein and represented by counsel; and the following additional boards together with their divisions and sub-units:

GENERAL COUNCIL ON MINISTRIES
UNITED METHODIST COMMUNICATIONS
GENERAL BOARD OF CHURCH AND SOCIETY
GENERAL BOARD OF DISCIPLESHIP
UNITED METHODIST YOUTH MINISTRY ORGANIZATION
GENERAL BOARD OF HIGHER EDUCATION AND MINISTRY
GENERAL BOARD OF PENSIONS
GENERAL BOARD OF PUBLICATION
COMMISSION OF ARCHIVES AND HISTORY
COMMISSION ON RELIGION AND RACE
COMMISSION ON THE STATUS AND ROLE OF WOMEN

g. Any other denomination-related institution not specifically enumerated above.

11. This Court is without jurisdiction over any of the units within or related to United Methodism referred to

above, except those units which have been specifically named as defendants herein.

FOURTH AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION

12. The allegations of Paragraphs 9 and 10 of the Third Affirmative Defense are referred to and incorporated by reference herein as though fully set forth.

13. To the extent that this Answer is deemed to be on behalf of any of the units within or related to United Methodism which are referred to above, such violates the due process rights of those units.

FIFTH THROUGH TWENTIETH AFFIRMATIVE DEFENSES

14. The allegations of Paragraphs 1 through 5 of the First Affirmative Defense are referred to and incorporated by reference herein as though fully set forth.

15. On December 20, 1978, defendant herein, GCFA, filed its First Amended Answer By Defendant GCFA To The Consolidated Amended Complaint (As Modified By Plaintiffs' Motion To Dismiss) asserting 17 affirmative defenses.

16. The allegations of the Second Affirmative Defense through the Seventeenth Affirmative Defense, inclusive, asserted by defendant, GCFA, are referred to and incorporated by reference as though fully set forth herein as the Fifth Affirmative Defense through the Twentieth Affirmative Defense, inclusive.

WHEREFORE, relief is prayed for as follows:

1. That plaintiffs and intervenors take nothing by their complaint;

2. For such further relief as the Court deems just.

DATED: July 2, 1979

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By _____
Samuel W. Witwer

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Supreme Court, U. S.
FILED
SEP 18 1979
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IN THE

Supreme Court of The United States

OCTOBER TERM, 1979

No. 79-245

FRANK T. BARR, et al.,

Plaintiffs,

vs.

THE UNITED METHODIST CHURCH, et al.,

Defendants.

On Petition For Writ of Certiorari to the Court Of Appeal, State Of California

SUPPLEMENTAL STATEMENT AND BRIEF OF PETITIONERS

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SUPPLEMENTAL STATEMENT OF FACTS

On August 17, 1979, three days after the filing of the petition for certiorari herein, the respondents filed a request with the clerk of the trial court, seeking an entry of default against the United Methodist Church on the ground that the answer filed on behalf of the denomination, on July 2, 1979, was inadequate. (This answer is reproduced as Appendix F to the petition.) The clerk refused to enter the default. Thereafter, on August 28, 1979, respondents filed a motion with the trial court to strike the answer. In their briefing on this motion, the respondents explained their objection to the answer—that it attempted to preserve the defense of incapacity to be sued, and it was filed by the petitioners

herein on behalf of the denomination rather than simply by "UMC." Respondents stated:

> "The purported answer avoids an answer by UMC because an answer by UMC would moot the issue before the United States Supreme Court."

Reply Memorandum in Opposition [Sic] to Motion to Strike Answer to Consolidated Amended Complaint (September 13, 1979) at 3.[1]

At a hearing on September 14, 1979, the Honorable Judge James L. Focht, to whom this case was reassigned, deferred decision on respondent's motion to strike the answer, noting the great importance of the case and its pendency before this Court.

This new development is included herein and addressed in argument below, pursuant to Supreme Court Rule 24(5). Because respondents have elected not to file a brief in opposition to the petition for certiorari, standing instead on their brief in the related *Trigg* case (*Milhouse* v. *United States District Court,* No. 78-1855) now pending before this Court, petitioners will be filing no reply brief herein. Petitioners have requested the joint consideration of *Trigg* and the present case as is now suggested by respondents.

[1] Respondents also argued that the trial court was bound to reject the answer because the Court of Appeal decision here on review is "the law of this case," so that "[w]hether UMC exists is no longer open for dispute—factual or otherwise." *Id.*

ARGUMENT

On June 18, 1979 respondents filed with Mr. Justice Rehnquist an Opposition to Application for Stay and claimed, among other things, that no harm or disadvantage to the denomination would ensue from requiring it to file an answer in this cause. There they stated:

> "Petitioner's argument that it is threatened with irreparable harm if it must answer or otherwise plead, is tenuous at best. No California case holds that a defendant in California who, like UMC, objects to jurisdiction and unsuccessfully seeks all available appellate review of the decision denying its jurisdictional objection waives its jurisdictional objection by thereafter answering."
>
> (Opposition to Application for Stay, S. Ct. Miscellaneous No. A-1084 filed June 18, 1979 at 41. Italics and footnote omitted.)

However, respondents' latest representation on the subject addressed to the trial judge, the Honorable James L. Focht, that "an answer by UMC would moot the issue before the United States Supreme Court" demonstrates the practical finality of the proceedings below and shows the ripeness of the issues for consideration by this Court at this time. Respondents directly seek to impose upon the United Methodist denomination the dilemma of either expressly conceding capacity to be sued in an answer, or suffering a default of hundreds of millions of dollars. While the trial court rejected respondents' efforts to force this Hobson's choice on the denomination prior to this Court's decision on petition for writ of certiorari, the dilemma remains. Should this Court deny review, the denomination may well have to suffer default in order to preserve the question of capacity and the constitutional integrity of its polity.

Respondents have clearly announced their determination to force the choice.[2]

This Court's review of the capacity issue and the constitutional questions raised by this case is now critically necessary.

Respectfully submitted,

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---

[2] In addition to their judicial filings, respondents have written "litigation reports" to class members and potential class members, informing them that if the denomination answers in the ordinary fashion, it would admit its jural status and "thereby moot its challenge to being sued," and in the event the denomination failed to answer, "it would be very difficult to get the default withdrawn." Ex. "A" to Motion to Prevent Unauthorized Communications with Potential Class Members (September 11, 1979) at 1-3.

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TABLE OF CONTENTS

		Page
I.	COUNTER STATEMENT OF QUESTIONS PRESENTED	1
II.	STATEMENT OF THE CASE	3
	A. Factual Background	3
	B. The Proceedings Below	8
III.	REASONS FOR DENYING THE WRIT	9
IV.	THIS ACTION DOES NOT VIOLATE THE DUE PROCESS RIGHTS OF MEMBERS AND UNITS OF THE UMC WHO HAVE NEITHER BEEN NAMED NOR SERVED AS DEFENDANTS	10
V.	IN A CIVIL ACTION INVOLVING A RELIGIOUS ORGANIZATION'S SECULAR CONDUCT, A COURT MAY MAKE FINDINGS CONCERNING THE STRUCTURE AND OPERATION OF THE ORGANIZATION WHICH ARE CONTRARY TO ITS EVIDENTIARY ASSERTIONS WITHOUT VIOLATING THE FREE EXERCISE CLAUSE OF THE CONSTITUTION	12
	A. The First Amendment Does Not Preclude A Court From Resolving Evidentiary Disputes Adversely to a Religious Organization's Assertions	12
	B. Compulsory Deference to a Religious Organization's Witnesses Would Violate the First Amendment	15
	C. The UMC's Polity Is Not Threatened By This Litigation	17
	1. Respondents Must Be Permitted to Sue the UMC	17
	2. The UMC's Existing Polity Need Not Be Altered to Defend This Action	18
VI.	CONCLUSION	21

TABLE OF AUTHORITIES

CASES — PAGE

Barr v. United Methodist Church, 90 Cal. App. 3d 259, 270, 153 Cal. Rptr. 319 (1979) 2, 3, 4, 5, 6, 8, 9, 11, 12, 13, 14, 19, 20
Brady v. Reiner, 198 S.E.2d 812, 841 (W.Va. 1973)..... 19
Brooks v. Chinn, 52 So. 2d 583 (La. 1951) 19
Carnes v. Smith, 236 Ga. 30, 222 S.E. 2d 322 (1976), *cert. denied,* 429 U.S. 868 (1976) 19
Clay v. Crawford, 298 Ky. 654, 183 S.W.2d 797 (1944)..... 19
Engel v. Vitale, 370 U.S. 421, 430-431 (1962)..... 16
Everson v. Board of Education, 330 U.S. 1, 15 (1947) 16
General Council on Finance and Administration of the United Methodist Church v. Superior Court, 99 S. Ct. 35, 38 (1978) (Rehnquist, J., in chambers), *cert. denied,* 99 S. Ct. 281 (1978) 8, 9, 14, 15
Goodson v. Northside Bible Church, 261 F. Supp. 99 (S.D. Ala. 1966), *aff'd,* 387 F.2d 534 (5th Cir. 1967)..... 19
Hoffman v. Tieton View Community Methodist Episcopal Church, 34 Wash. 2d 38, 207 P.2d 699 (1949) 19
Jones v. Wolf, ... U.S. ...., 99 S. Ct. 3020, 3024, n.2 (1979)..... 19
Juneau Spruce Corporation v. I.L.&W. Union, 119 Cal. App. 2d 144, 147, 259 P.2d 23 (1953)..... 11
Milhouse, et al. v. United States Court for the Southern District of California and Trigg, No. 78-1855 (S.D. Cal.) 2, 13
Ohio Southeast Conference Evangelical United Brethren Church v. Kruger, 17 Ohio Misc. 8, 243 N.E.2d 781 (1968) 19
In re Pacific Homes, No. 77-0166-JM (C.D. Cal.) 6
Potts v. Whitson, 52 Cal. App. 2d 199, 205, 125 P.2d 947 (1942) .. 11
Reynolds v. United States, 98 U.S. 145, 166-67 (1879) 16
School District of Abington v. Schempp, 374 U.S. 203, 225-226 (1963) 16
The United Methodist Church et al. v. Sparrow, Civil No. 6881 (Superior Court of Dooly Co., Georgia 1976) 19
Trustees/Peninsula Annual Conference v. Spencer, 183 A.2d 588 (Del. 1962) 19

CASES — PAGE

Turbeville v. Morris, 203 S.C. 287, 26 S.E. 2d 821 (1943)..... 19
United Methodist Church v. St. Louis Crossing Independent Methodist Church, 50 Ind. App. 574, 276 N.E.2d 916 (1971)..... 19
Western Pennsylvania Conference of The United Methodist Church v. Everson Evangelical Church of North America, 312 A.2d 35 (Pa. 1973)..... 19
Wisconsin v. Yoder, 406 U.S. 205, 215 (1972)..... 17

RULES AND STATUTES

Bankruptcy Act, Chapter X, Proceedings for the Reorganization of a Corporation
Rule 10-208(a)(4), (a)(5) and (a)(7) at 1, 3 .....6, 7
Bankruptcy Act, Chapter XI
Section 167 .....6, 7
Sections 167(1), (3) and (5)..... 7
California Code of Civil Procedure
Section 382 8
Section 388 .....8, 10
California Corporations Code § 24002 (West 1972)..... 11
California Welfare and Institutions Code § 16304 (West 1974)..... 5
Federal Rules of Civil Procedure, Rule 17(b) 2
28 U.S.C. § 1257(3) 9, 10-11, 13, 21
United States Constitution, First Amendment.....12, 14, 15, 18
United States Constitution, Fourteenth Amendment..... 14

OTHER AUTHORITIES

Encyclopedia Britannica, 1959 Edition, on "Methodism"..... 8
The Book of Discipline of The United Methodist Church (1976 ed.) 4, 5, 8, 12, 13, 14, 18, 19, 20, 21

IN THE

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA

Respondents respectfully request that this Court deny the Petition for Writ of Certiorari sought by petitioners on behalf of The United Methodist Church to review the March 8, 1979, decision of the Court of Appeal, State of California, Fourth Appellate District.

I. COUNTER STATEMENT OF QUESTIONS PRESENTED

This case involves the fundamental right of private citizens to sue for damages caused them by the wrongful conduct of a secular retirement home which conducted business and entered into contracts in the name of The United Methodist Church and its predecessors (the "UMC"). The California Court of

Appeal, noting that the UMC is "a highly organized religious body working through specific agencies," properly concluded that the UMC is susceptible to suit as an unicorporated association under Section 388 of the California Code of Civil Procedure. *Barr v. United Methodist Church,* 90 Cal. App. 3d 259, 270, 153 Cal. Rptr. 319 (1979).[1] The only issues presented are:

> 1. Does a civil action against an unincorporated association violate the due process rights of members and constituent units of the association who are not parties to the action where (a) no attempt has been made to reach their assets and (b) state law specifically prohibits satisfying any judgment from the individual assets of members or constituent units who are not named and served in the action?
>
> 2. In a purely secular dispute between private citizens and a church organization, may a court, without violating the Free Exercise Clause of the Constitution, consider the by-laws, constitution, and other written regulations governing the operation and structure of the organization in determining whether the organization is an unincorporated association under state law, or must the court accept as fact the affidavits of the organization's own religious leaders?

As discussed *infra,* these issues fail to raise a substantial federal question, and for that reason the Petition should be denied.

---

[1] In *Milhouse, et al. v. United States District Court for the Southern District of California and Trigg,* No. 78-1855 (S.D. Cal.) ("Trigg"), the District Court concluded that the UMC is an unincorporated association under Rule 17(b) of the Federal Rules of Civil Procedure and suable for violations of the federal securities laws. The lower court's interpretation of California law, unlike the District Court's interpretation of Rule 17(b), presents no federal question for review by this Court.

II. STATEMENT OF THE CASE

A. Factual Background

Pacific Homes is a non-profit corporation, which until February 18, 1977, operated 14 retirement and convalescent facilities in California, Arizona and Hawaii in the name of the UMC. App. Ex. No. 1 (Ex. Nos. 1 and 2 at 1).[2] Pacific Homes was headquartered in Los Angeles, where it shared space with the Los Angeles area office of the UMC and the Pacific and Southwest Annual Conference of The United Methodist Church ("PSWAC"). This multi-state, commercial operation had revenues of over $7 million per year and assets exceeding $30 million. App. Ex. No. 1 (Ex. No. 20 at 3, 4).

Pacific Homes sold Lifetime Care Agreements ("Agreements"), pursuant to which it agreed to provide elderly persons with lifetime accommodations and care, including food, unlimited medical treatment and convalescent care. All residents were required to prepay a substantial sum of money for their lifetime accommodations. A large number of residents also prepaid for lifetime care, many in amounts over $100,000. App. Ex. No. 1 (Ex. Nos. 1, 16, 17, 19). The remaining residents were required to make fixed monthly payments for care. These monthly fees were guaranteed not to increase or were subject to very limited increases. App. Ex. No. 1 (Ex. No. 14 at III-4).

Pacific Homes attracted residents through a nationwide advertising program which publicized the fact that Pacific Homes was "a non-profit corporation of The United Methodist Church." *See, e.g.,* App. Ex. No. 1 (Ex. Nos. 24-28).[3] In its

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[2] All references to "App. Ex. No. . . ." refer to the record used in the California Appellate Court proceedings. References to the record in *Trigg* are designated as "*Trigg* . . . . ."

[3] These advertisements ran in Time, National Geographic, The Wall Street Journal, U.S. News and World Report, Citizen News, National Observer, Retired Officer, Sunset Magazine, Westways and American Senior Citizen News. Deposition of Abbie E. Sargent ("Sargent Deposition"), April 6, 1979, Ex. No. 1.

promotional literature, Pacific Homes stated that it was an agency of the UMC, a non-profit corporation of the UMC and/or sponsored by the UMC. App. Ex. No. 1 (Ex. Nos. 1, 17, 38a-43, 46-47); App. Ex. No. S (Ex. Nos. 50-54). Signs outside each facility, Pacific Homes' corporate stationery and Pacific Homes' Agreements all described Pacific Homes as an "agency of" or "sponsored by" or "a retirement program of" the UMC. App. Ex. No. 1 (Ex. Nos. 15, 22, 31, 32, 36, 37).[4]

Pacific Homes' Articles of Incorporation (i) required it to make annual payments for the benefit of retired UMC ministers, (ii) authorized PSWAC, the UMC Annual Conference having jurisdiction over Pacific Homes, to direct the disposition of Pacific Homes' assets in the event of its dissolution, and (iii) subjected it "to the uses and Discipline of The [United] Methodist Church."[5] App. Ex. No. 1 (Ex. Nos. 3-4). Pacific Homes' Board of Directors has always been appointed by PSWAC or composed of UMC ministers and lay members of the Annual Conference. App. Ex. No. 1 (Ex. Nos. 3-4, 6-18).

[4] Pacific Homes' Director of Public Relations testified that the promotional literature which stressed Pacific Homes' UMC connection "was the strength of our whole program;" it "very definitely . . . induced in potential residents a feeling of confidence in Pacific Homes" and was "a significant factor in the decision of people to come to Pacific Homes." Sargent Deposition at 26, 39, 56.

[5] For example, Pacific Homes was subject to Paragraph 2445 of *The Book of Discipline of The United Methodist Church* (1976 ed.) (hereafter cited as the "*Discipline*"):

> Trustees of schools, colleges, universities, hospitals, homes, orphanages, institutes, and other institutions owned or controlled by The United Methodist Church shall be at least twenty-one years of age. At all times not less than three-fifths of them shall be members of The United Methodist Church, and all must be nominated, confirmed, or elected by some governing body of the Church or by some body or officer thereof to which or to whom this power has been delegated by the governing body of the Church. . . .

More importantly, Pacific Homes had specific authority to operate in the name of the UMC. It was granted "affiliation" and later "certification" status by the Health and Welfare Certification Council of the UMC. This meant that Pacific Homes had met specified professional, scientific, and financial standards, had "demonstrated . . . its United Methodist Church relationship . . . [and was, therefore,] . . . *entitle[d] to identify itself as an agency of The United Methodist Church.*"[6] App. Ex. No. 9 (Ex. Nos. 4 at 31 and 5 at III). (Emphasis supplied.) The UMC Bishop in charge of PSWAC, who was both a director of Pacific Homes and President of the UMC's Council of Bishops, repeatedly affirmed the UMC's sponsorship of Pacific Homes in its written promotional materials. App. Ex. No. S (Ex. No. 16 at 1; 18 at 1, 3; 19 at 1, 5); App. Ex. S (Ex. No. 18; Ex. No. 16 at 1); App. Ex. S (Ex. No. 18 at 1, 3); App. Ex. No. S (Ex. No. 19 at 1, 5).

Unfortunately, Pacific Homes failed to provide the lifetime security it promised its residents. Rather than setting aside the large sums it was receiving as prepaid fees to provide funds for resident care in future years (as required by California law),[7] Pacific Homes used the money, *inter alia*, to build new facilities, to cover current operating deficits and to make speculative investments for other missions served by the UMC. App. Ex. No. 5 (Ex. No. 11). As a result, there were insufficient funds to

[6] The UMC has vigorously protected its "Methodist" trademark. In November 1975, The General Council on Finance and Administration of the United Methodist Church demanded that the "United Methodist Church Insurance Program," a private organization, "cease" using the terms "Methodist," stating "[y]ou do not have the approval or consent of *The United Methodist Church* to use . . . as a part of a name or any business firm or organization the term 'Methodist' or 'United Methodist.'" App. Ex. No. M (Ex. No. 16 at 2). This demand was successful. App. Ex. No. S (Ex. No. 23). *See also* the *Discipline* ¶ 2402 at 532.

[7] California Welfare and Institutions Code § 16304 (West 1974).

meet the cost of future care. App. Ex. No. 16 (Ex. Nos. 13, 14); App. Ex. No. 1 (Ex. No. 14); App. Ex. No. S (Ex. No. 11).

Finally, on February 18, 1977, Pacific Homes filed for an Arrangement under Chapter XI of the Bankruptcy Act, which was subsequently converted to Proceedings for the Reorganization of a Corporation under Chapter X of the Act. *In re Pacific Homes*, No. 77-0166-JM (C.D. Cal.). Residents, many of whom had expended the bulk of their life savings to prepay for their Agreements (and many of whom, relying upon the UMC's assurance of lifetime care, made substantial gifts to the UMC and its constituent units), must now make monthly payments of between $350 and $850 to the Bankruptcy Trustee for food and lodging for which they previously fully paid. In addition, the Bankruptcy Trustee eliminated virtually all medical care required under the Agreements. As a result, residents, more than half of whom have incomes of less than $10,000 per year, must now pay for these expenses as well. Affidavit of William S. Lerach, dated June 18, 1979, ¶¶ 3, 4, 6, 16 (Ex. Nos. 1, 14).

The complaint, filed by plaintiffs on behalf of themselves and some 1,800 other residents of Pacific Homes, named as defendants the UMC and certain of its constituent agencies—The General Council on Finance and Administration of The United Methodist Church ("GCFA") and PSWAC.[8] The complaint seeks declaratory relief and damages for breach of contract, fraud, deceit, and statutory violations against the defendants based upon their legal relationship to Pacific Homes, as well as their direct participation in and endorsement of the alleged wrongdoing.

[8] All references are to the First Amended Complaint (App. Ex. No. C). A Consolidated Amended Complaint was subsequently filed adding two other church agencies—The General Board of Global Ministries of The United Methodist Church ("GBGM") and The Health and Welfare Ministries Division of The Board of Global Ministries of The United Methodist Church ("HWMD").

Pursuant to Section 167 of the Bankruptcy Act, Pacific Homes' independent Bankruptcy Trustee recently filed in federal court a report of his two and one-half year investigation into the collapse of Pacific Homes. In his Report, a copy of which is lodged herewith, the Bankruptcy Trustee concludes that:

> *For more than 25 years, Pacific Homes perpetrated a fraud on unsuspecting elderly people in the name of the Methodist Church.*
>
> . . . .
>
> Pacific Homes has always been a Methodist institution. It has always complied with the dictates of the Methodist Church and carried out Church missions without regard to economic consequences. The Methodist Church sanctioned the policies and actions of Pacific Homes, was fully informed of the financial problems for many years and encouraged Pacific Homes to present itself to the public as a Methodist agency. Instead of taking appropriate action to correct the problems at Pacific Homes, the Church allowed the same business practices to continue despite the knowledge that such continuance could only worsen the financial condition of Pacific Homes and add to the injuries and damages sustained.
>
> The Methodist Church allowed Pacific Homes to fail. The Church should not be allowed to escape liability for the wrongs it has wrought. Legal actions have already been instituted against the Methodist Church by the Trustee and by the residents of the homes.[9]

[9] "Report of the Trustee of Pacific Homes pursuant to Sections 167(1), (3) and (5) of the Bankruptcy Act and Chapter X Rule 10-208(a)(4), (a)(5) and (a)(7)" at 1, 3. (Footnote omitted.) Respondents respectfully request that the Court take judicial notice of the Report, which was filed with the United States District Court for the Central District of California on October 26, 1979.

B. The Proceedings Below

In January 1978, petitioners sought to quash service of process, contending that the UMC was merely a loose, nonauthoritarian spiritual federation, not suable as an unincorporated association. The trial court granted petitioners' motion to quash, relying solely upon an excerpt from the 1959 edition of the Encyclopedia Brittanica on "Methodism"—not The United Methodist Church.[10] The California Court of Appeal unanimously reversed, holding that:

> (a) The UMC is a hierarchical religious organization suable as an unincorporated association under California Code of Civil Procedure § 388 (90 Cal. App. 3d at 263-272);
>
> (b) This action does not violate the due process rights of individual members or constituent units of the UMC who have not been named as defendants in the action (*Id* at 272-273); and
>
> (c) The constitutional guarantees of freedom of religion do not bar this action against the UMC by private citizens complaining of wrongful secular conduct (*Id.* at 273-276).

After the California Supreme Court denied review, Mr. Justice Rehnquist, and later this Court (two Justices not participating), denied petitioners' motion for a stay pending action on the Petition.[11]

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[10] "Methodism" is a form of religious worship or belief of which the UMC is but one of many adherents. *See, e.g., Discipline* at 7-18.

[11] On July 25, 1979, the trial court certified this action as a class action pursuant to California Code of Civil Procedure § 382 on all causes of action except specific performance.

III. REASONS FOR DENYING THE WRIT

Stated in its simplest terms, petitioners urge that this Court resolve what they concede to be a dispute over whether the UMC is organized, structured and operates as an unincorporated association *under state law.* A "plethora of evidence on the question of whether the UMC is an unincorporated association" was presented to and considered by the state courts, which ultimately rejected petitioners' contentions. 90 Cal. App. 3d at 263. Petitioners do not assert that Section 388 of the California Code of Civil Procedure, which defines unincorporated associations, is unconstitutional. Rather, petitioners argue that the lower court's determination that the UMC falls within Section 388 is erroneous. 28 U.S.C. § 1257(3) simply does not provide for review by this Court to reconsider and reweigh that evidence.[12]

In an effort to bring themselves within Section 1257(3), petitioners have fashioned arguments that due process rights of persons not parties to the litigation may be violated (although no such violation has taken place, nor could it under state law) and that the First Amendment, as a matter of law, prohibits civil courts from reviewing or considering any evidence other than the UMC's own experts, in determining whether the UMC is an unincorporated association subject to suit for its wrongdoings.

As respondents demonstrate below, no person's due process rights have been or could be violated, and, in any event, the question is not yet ripe for consideration. Petitioners' First Amendment arguments are totally without merit, as previously determined by Mr. Justice Rehnquist in a related ruling, *General Council on Finance and Administration of the United Methodist Church v. Superior Court, supra,* 99 S. Ct. 35, 38 (1978) (Rehnquist, J., in chambers), *cert. denied,* ..... U.S. ....., 99 S. Ct. 281 (1978). *See* pp. 14-15, *infra.*

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[12] Respondents agree that the decision of the Court of Appeal is a final decision for the purpose of 28 U.S.C. § 1257.

IV. THIS ACTION DOES NOT VIOLATE THE DUE PROCESS RIGHTS OF MEMBERS AND UNITS OF THE UMC WHO HAVE NEITHER BEEN NAMED NOR SERVED AS DEFENDANTS

Whether the UMC is organized, structured and operated in a fashion which makes it amenable to suit under California statutory provisions defining and permitting suits against unincorporated associations is a question solely of state law with no constitutional implications. California's resolution of this issue presents no federal question and, therefore, the criteria for review under 28 U.S.C. § 1257(3) have not been met.

Petitioners seek to create a constitutional issue, however, by claiming that this action jeopardizes the individual assets of some 10 million members of the UMC in violation of their due process rights. There are several reasons why petitioners' due process claims are without merit.

First, there can be no denial of due process *until and unless* the California courts attempt to reach the individual assets of members of the association not personally served and before the courts. No such action has been taken here. Indeed, plaintiffs have stated that no attempt will be made to reach the personal assets of members not before the court. In any event, until such an attempt has been made, the purported due process issue is not ripe for review.

Second, California law contains due process safeguards which prohibit access to the assets of a member of an unincorporated association to satisfy a judgment against the association, unless the member is named as a defendant and served in the action. Section 388 of the California Code of Civil Procedure authorizes suit against an unincorporated association *in its common name.* A plaintiff seeking "a judgment against [any member of an unincorporated association] based on his personal liability" must name and serve him. California Code

of Civil Procedure § 388 (West 1972). "When . . . sued by the common name the association is held to be a separate entity . . . and the action against it is regarded as an action against a single defendant. . . ." *Potts v. Whitson,* 52 Cal. App. 2d 199, 205, 125 P.2d 947 (1942). As stated in *Juneau Spruce Corporation v. I.L.&W. Union,* 119 Cal. App. 2d 144, 147, 259 P.2d 23 (1953): "*[L]iability is created only against the association and not against its individual members.*" (Emphasis added.) *See also* California Corporations Code § 24002 (West 1972).

Finally, by *ipse dixit,* petitioners contend that because the UMC allegedly does not exist, it has no assets that could be used to satisfy a judgment against it.[13] They argue that as a practical matter plaintiffs will be forced to seek the individual assets of the UMC's 10 million members. Petition at 23-25. Petitioners' argument was made to and rejected by the Court of Appeal:

> To add a constitutional requirement, however, that before UMC can be recognized as an entity, plaintiff must also identify each asset that may be reached to assure the absence of any third party claim in that asset, is to create an issue where one does not exist. We recognize the inextricable relationship between obtaining a judgment and having it satisfied; nevertheless, to adjudicate questions on ownership of property before judgment is essentially a reversal in the process of litigation.

90 Cal. App. 3d at 272.

[13] Respondents have been prevented from taking *any* discovery against the UMC, which asserts that: "Since The United Methodist Church is not a legally cognizable entity, such denomination cannot receive, act upon or respond to any request for discovery. . . ." Response to Request for Discovery and Production of Documents Pursuant to C.C.P. § 2031 (February 13, 1978). Thus, while insisting that the courts must accept what they say about their association, petitioners deny all access to contrary evidence.

Moreover, the assertion that the UMC has no assets is inconsistent with the lower court's finding that the UMC has associational assets designated as "general church funds" which are collected and disbursed by GCFA. General church funds include about $60 million per year collected at the local church level and forwarded through the UMC's annual conferences to GCFA. *See, e.g.*, App. Ex. No. M (Ex. No. 2 at 17-18). GCFA, of course, is accountable[14] and amenable[15] to the UMC in all matters relating to the receipt, disbursement and reporting of general church funds. *Discipline* ¶¶ 904, 906 at 330, 333.

Simply stated, no one's due process rights are in jeopardy, nor could they be under California law.

V. IN A CIVIL ACTION INVOLVING A RELIGIOUS ORGANIZATION'S SECULAR CONDUCT, A COURT MAY MAKE FINDINGS CONCERNING THE STRUCTURE AND OPERATION OF THE ORGANIZATION WHICH ARE CONTRARY TO ITS EVIDENTIARY ASSERTIONS WITHOUT VIOLATING THE FREE EXERCISE CLAUSE OF THE CONSTITUTION

A. The First Amendment Does Not Preclude A Court From Resolving Evidentiary Disputes Adversely to a Religious Organization's Assertions

Despite the Court of Appeal's ruling that the "UMC is a highly organized religious body working through specific

[14] "*Accountability.* The requirement upon an organized structural unit in The United Methodist Church to report, explain, or justify its action(s) to another unit in the church structure." *Discipline* Glossary at 591.

[15] "*Amenability.* The requirement upon an organized unit in The United Methodist Church to answer to, act under instruction of, agree with, yield to, or submit to another unit in the church structure. It connotes legal responsibility. On the general level, all of the general agencies that have been constituted by the General Conference are amenable to the General conference, except as otherwise provided." *Discipline* Glossary at 592.

agencies . . ." (90 Cal. App. 3d at 270), petitioners repeatedly argue that *"in fact"* the UMC is a loosely-structured "connectional" religious denomination composed of "largely independent units" in which there is no "chain of command." (Emphasis added.) *E.g.*, Petition at 6, 8, 12, 13, 29, 37. As noted above, a state court's resolution of such factual disputes does not present a federal issue reviewable under 28 U.S.C. § 1257(3).

Petitioners therefore offer the rather novel proposition that the Free Exercise Clause of the First Amendment somehow prohibits a civil court from independently reviewing the evidence in a secular dispute and making findings and reaching conclusions regarding the jural status of a religious organization whenever those conclusions are contrary to the assertions of the religious organization's own witnesses.[16] By so arguing, peti-

[16] The "experts" upon whose assertions petitioners rely were severly impeached. For example, the record shows that GCFA asks for, accepts and processes checks payable to "The United Methodist Church." *Trigg* Affidavit of William S. Lerach, dated June 30, 1978, Ex. Nos. 32, 33, 34 and 72. Nevertheless, Dr. Murray H. Leiffer, upon whose affidavit petitioners place great reliance (*see* Petition at 8, 9, 10, 11, 13, 29) testified that it "would be impossible" to write a check payable to the UMC; that no one would have authority to cash a check payable to the UMC; that he knew of no vehicle that exists to take checks written to the UMC, cash and process them; and that such a check would be returned to the sender. *Trigg* Deposition of Murray H. Leiffer, June 9, 1978 ("Leiffer Deposition") at 46. Similarly, charts purporting to show the structure of UMC attached to Leiffer's affidavit were not prepared by him; he did not know who prepared them, and he was unable to explain the entries on them. Leiffer Deposition at 43-44, 76. Leiffer also admitted that the use in his affidavit of the term "in harmony with" to describe how certain UMC units must act was a "weasel term." Leiffer Deposition at 50. Leiffer admitted that the provision in the *Discipline* assigning responsibility for the "oversight of the . . . temporal affairs of the whole church" to the Council of Bishops was inconsistent with his testimony, but he simply does not believe the *Discipline* provision to be true. Leiffer Deposition at 40-42.

tioners seek to convert their adversarial position into a religious rite, thereby precluding the evaluation of any evidence other than their own—even an independent reading of the plain language of the *Discipline*. As the Court of Appeal recognized, petitioners seek a rule of constitutional law that effectively would immunize unincorporated religious organizations from suit for wrongs committed in the secular area:

> To defer absolutely to authoritative church experts would be to grant immunity to religious organizations in cases which might arise far afield from religious activities with the resultant effect that civil courts would then be subordinate to organizations which might attempt to classify themselves as religious to obtain the benefits of the shield of First Amendment protection.
>
> * * *
>
> The statutory enactments involved in this action are for the purpose of providing substantive rights to citizens and to assure access to the courts, including the right to sue organizations functioning as unincorporated associations. The internal ecclesiastical judicial system of UMC does not provide any method of redress for plaintiffs. The use of the courts as a method of dispute resolution cannot be foreclosed to this class of plaintiffs who have alleged fraud, breach of contract and statutory violations because one of the named defendants is a religious body. Neither the state nor federal Constitution may be interpreted in a manner which would deny plaintiffs the right to sue UMC.

90 Cal. App. 3d at 274-76.

Indeed, the same argument was made to and rejected by Mr. Justice Rehnquist in an earlier proceeding in this action:

> In my view, *applicant [GCFA] plainly is wrong when it asserts that the First and Fourteenth Amendments prevent a civil court from independently examining, and making the*

> *ultimate decision regarding, the structure and actual operation of a hierarchical church and its constituent units in an action such as this.* There are constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating intrachurch disputes. See *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich, supra.* But this Court never has suggested that these constraints similarly apply outside the context of such intraorganizational disputes. Thus, *Serbian Orthodox Diocese* and the other cases cited by applicant are not in point. Those cases are premised on a perceived danger that in resolving intrachurch disputes the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. *Id.,* 426 U.S. at 709-710, 96 S.Ct. at 2380-2381. *Such considerations are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract and statutory violations are alleged.* As the court stated in another context, 'Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public.' *Cantwell v. Connecticut,* 310 U.S. 296, 306 . . (1940).

General Council on Finance and Administration of The United Methodist Church v. Superior Court, supra, 99 S. Ct. at 38 (emphasis added).

B. Compulsory Deference to a Religious Organization's Witnesses Would Violate the First Amendment

The result petitioners seek would require this Court to create an evidentiary privilege for religious organizations involved in civil litigation arising from their secular activities which would not be available to non-religious organizations. Such a privilege would violate the Establishment Clause of the

First Amendment, which prohibits "laws which aid one religion, aid all religions, or prefer one religion over another." *Everson v. Board of Education,* 330 U.S. 1, 15 (1947).

The Establishment Clause requires strict governmental neutrality with respect to religious belief, doctrine and dogma. *School District of Abington v. Schempp,* 374 U.S. 203, 225-226 (1963). Government action "establishes" religion in violation of the First Amendment when it directly aids one or all religious groups, whether this aid operates to coerce non-believers or not. *Id.* at 222; *Engel v. Vitale,* 370 U.S. 421, 430-431 (1962). Granting religious organizations the privilege of having their witnesses' opinions treated as binding on civil courts operates to establish religion by placing religious organizations beyond civil court jurisdiction and permitting them to avoid their secular legal obligations.

> Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices.
>
> . . . .
>
> Can a man excuse his practices to the contrary because of his religious belief? *To permit this would be to make the professed doctrines of religious belief superior to the law of the land,* and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

Reynolds v. United States, 98 U.S. 145, 166-67 (1879) (emphasis added).

To require the federal and state courts to rubber stamp positions taken by witnesses appearing on behalf of religious organizations, when no such deference is accorded secular associations, would breach the wall of separation between church and state.

C. The UMC's Polity Is Not Threatened By This Litigation

The Petition acknowledges that respondents' right to legal redress for the secular wrongs complained of is one of those fundamental "interests of the highest order . . . not otherwise served"[17] which justifies infringement on the free exercise of religion. Petition at 38. However, petitioners argue that permitting a suit against the UMC is not necessary to protect respondents' admittedly fundamental rights because (i) "any unit" of the UMC can be sued and (ii) to permit a suit against the UMC would require it to create "an overarching central management," thus causing the UMC to restructure its polity against its will. Petition at 10, 12 and 38. The implication is that if respondents have been wronged, redress is readily available against PSWAC, GCFA, GBGM and HWMD.

1. *Respondents Must Be Permitted to Sue the UMC*

Each of the subordinate units of the UMC sued in *Barr* has denied any liability to plaintiffs. For example, GCFA alleges:

> Plaintiffs never advised GCFA that they deemed themselves to have some legally enforceable relationship with it and, thus, GCFA never had reason to suspect that Plaintiffs might some day assert such a relationship.
>
> . . . .
>
> GCFA has had no involvement whatsoever in the formation, financing or operation of Pacific Homes.

Answer of GCFA filed December 19, 1978, at ¶¶ 14, 8. *See* GBGM Answer filed December 19, 1978, at ¶¶ 13, 28, 31; PSWAC Answer filed December 19, 1978, at ¶¶ 4, 5, 6.

Pacific Homes operated in the name of the UMC and entered into contracts in the name of the UMC, not GCFA or GBGM, which are subordinate units within the UMC per-

---

[17] *Wisconsin v. Yoder,* 406 U.S. 205, 215 (1972).

forming specific missional and financial functions for it on a nationwide basis. In short, each of the UMC units sued is vigorously defending on the ground that Pacific Homes had no legal relationship to it (as opposed to the UMC) and that respondents did not rely on it (but, rather, relied on the UMC for support and sponsorship). After all, defendants would argue, Pacific Homes' contracts, signs and promotional materials referred to "The United Methodist Church," not its constituent parts.

Under California law, any member or constituent unit of an unincorporated association is entitled to assert whatever individual defenses are available, and no member or unit can be held liable until individual legal responsibility is established. The vigorous assertion of these individual defenses by each of the UMC units named as defendants emphasizes the legal and practical necessity for a suit against the unincorporated association in whose name Pacific Homes operated and contracted.

2. *The UMC's Existing Polity Need Not Be Altered to Defend This Action*

The Petition asserts that the UMC "cannot conduct the defense of a lawsuit," "lack[s] the capacity to conduct litigation" and that permitting it to be sued as an unincorporated association will require the creation of a central management. Petition at 25, 27 and 38. Petitioners thus argue that defense of a civil action for damages is an unconstitutional infringement of the free exercise of the Methodist faith.

This argument fails for several reasons. First, petitioners' contention that the court's ruling will result in a mandatory restructuring of the inner workings of the UMC, thus violating the First Amendment, flies in the face of prior court decisions as well as the *Discipline*.

> [T]hose who call themselves Methodists have governed themselves since the formation of this State in a connectional and hierarchical form of church government. *Further, the polity of the United Methodist Church and its predecessor organizations is readily identifiable as a hierarchical church structure. No reason for inquiry into church doctrine or interpretation of ecclesiastical law is necessary to reach this conclusion.* *See* Book of Discipline U.M.C. (1968), supra, ¶ 1501. . . .

Brady v. Reiner, 198 S.E.2d 812, 841 (W.Va. 1973) (emphasis added). *See also Jones v. Wolf,* .... U.S. ...., 99 S. Ct. 3020, 3024 n.2 (1979).

Indeed, the UMC was a defendant and a cross-claimant in *United Methodist Church v. St. Louis Crossing Independent Methodist Church,* 50 Ind. App. 574, 276 N.E.2d 916 (1971), and sued as a plaintiff in *The United Methodist Church, et al. v. Sparrow,* Civil No. 6881 (Superior Court of Dooly Co., Georgia 1976). App. Ex. No. S (Ex. Nos. 8-10). A host of decisions have recognized, without exception, that the UMC is a hierarchical organization in which its operating units are subordinate parts of an ecclesiastical system of a general church government. *United Methodist Church v. St. Louis Crossing Independent Methodist Church, supra; Carnes v. Smith,* 236 Ga. 30, 222 S.E.2d 322 (1976), *cert. denied,* 429 U.S. 868 (1976); *Brady v. Reiner, supra; Western Pennsylvania Conference of The United Methodist Church v. Everson Evangelical Church of North America,* 312 A.2d 35 (Pa. 1973); *Ohio Southeast Conference/Evangelical United Brethren Church v. Kruger,* 17 Ohio Misc. 8, 243 N.E.2d 781 (1968); *Trustees/Peninsula Annual Conference v. Spencer,* 183 A.2d 588 (Del. 1962); *Hoffman v. Tieton View Community Methodist Episcopal Church,* 34 Wash. 2d 38, 297 P.2d 699 (1949); *Goodson v. Northside Bible Church,* 261 F. Supp. 99 (S.D. Ala. 1966), *aff'd,* 387 F.2d 534 (5th Cir. 1967); *Brooks v. Chinn,* 52 So. 2d 583 (La. 1951); *Clay v. Crawford,* 298 Ky. 654, 183 S.W.2d 797 (1944); *Turbeville v. Morris,* 203 S.C. 287, 26 S.E. 2d 821 (1943).

Moreover, contrary to the UMC's plea that it cannot defend itself, the *Discipline* explicitly provides:

> [*GCFA*] *shall have the authority and responsibility to: . . . take all necessary legal steps to safeguard and protect the interests and rights of The United Methodist Church; . . .* and to *make provisions for legal counsel where necessary in order to protect the interests of the Church at the request of a general agency or a bishop,* as the Council deems advisable. . . ."

Discipline ¶ 907(4) at 338-339 (emphasis added).

Second, petitioners never raised this contention in the trial court. When they raised it for the first time in the Court of Appeal, that court found:

> There is no evidence to show that rendering UMC amenable to suit would affect the distribution of power or property within the denomination, would modify or interfere with the modes of worship affected by Methodists or would have any effect other than to oblige UMC to defend itself when sued upon civil obligations it is alleged to have incurred.

90 Cal. App. 3d at 274.

Third, the fees of counsel who have represented petitioners throughout this proceeding have been paid by GCFA pursuant to the provisions of the *Discipline*.[18] The quality of that representation—and the vigor with which it has been undertaken—assures that the interests of the UMC have been and will be well represented and fully protected.

Finally, petitioners concede that the General Conference can act to defend the UMC's interests. Petition at 14. The Council of Bishops, which is charged with "oversight of the . . . temporal affairs of the whole Church" (*Discipline* ¶ 525 at 227), can convene special sessions of the General Conference of the UMC. *Discipline* ¶ 13 at 22. Thus, even under petitioners' view, the mechanics exist for conducting a defense of the UMC.

[18] Transcript of hearing before Superior Court on October 12, 1979, at 15. *See Discipline* ¶ 907(4).

VI. CONCLUSION

Petitioners' plea that this is a class action in search of a "deep pocket" which if permitted is an "invitation for *in terrorem* litigation against a new class of defendants" is an attempt to substitute emotion for dispassionate legal analysis. As the foregoing discussion makes clear, the Petition fails to present any substantial federal issues for review under 28 U.S.C. § 1257(3). Respondents therefore respectfully request that the Writ not issue.

Dated this 1st day of November 1979.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-245

FRANK T. BARR, et al.,

Plaintiffs,

VS.

THE UNITED METHODIST CHURCH, et al.,

Defendants.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA

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TABLE OF CONTENTS

PAGE

Reply Brief of Petitioners 1

I. Respondents Have Conceded the Finality of the Decision Below 2

II. Respondents' Brief Illustrates the Denials of Due Process which Suit against the Denomination Would Impose 3

1. Inability to Conduct Litigation 4

2. Adjudication in Absentia 5

3. Prejudgment 6

III. Respondents' Brief Illustrates the Restraints on the Free Exercise of Religion which the Decision Below Would Impose 7

IV. Respondents' Diversionary Assertions of Fraud are Both Unfounded and Irrelevant 10

Conclusion 12

TABLE OF AUTHORITIES

Clay v. Crawford, 298 Ky. 654, 183 S.W. 2d 787 (1944) 4

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1974).. 2

Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952). 10

McCorkle v. City of Los Angeles, 70 Cal. 2d 252, 449 P. 2d 453 (1969) 2

Roman Catholic Archbishop of San Francisco v. Superior Court, 15 Cal. App. 3d 405 (1971) 7

Wisconsin v. Yoder, 406 U.S. 205 (1972) 10

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PETITIONERS' REPLY BRIEF

The Petition for Writ of Certiorari in this case asks the Court to consider whether, in view of its diffuse organization, absence of central direction, and lack of common funds, the United Methodist Church may be required by a state to defend a suit for damages as though it were an entity, under an "unincorporated association" statute, or whether such an action may be brought only against the separate jural units which make up the denomination. The Petition urges that to require the denomination to be treated as an entity offends the guarantees of both due process and free exercise of religion.

The brief which respondents have filed in opposition to certiorari, at the Court's request, addresses these issues only obliquely. The brief primarily argues fraud, deception, and collusion by United Methodism—assertions gen-

erated outside of the record—which respondents believe entitle them to a large recovery against their chosen litigation target. These extreme assertions which have recently received increased media attention, are wholly false. Aside from their falsity, however, they do not answer the issues presented to this Court. Indeed, respondents' brief serves to demonstrate again that this Court's review is critically necessary at this time.

I.

RESPONDENTS HAVE CONCEDED THE FINALITY OF THE DECISION BELOW.

In opposing a motion for stay of the state court proceedings, respondents previously argued that the decision requiring the United Methodist Church to litigate as an entity was not a final one. Opposition to Application for Stay Pending Review on Certiorari (June 18, 1979) at 41. Now, without explanation, and in a footnote, respondents have explicitly conceded finality. Resp. Br. at 9, n. 12. Yet, to concede finality in the posture of this case is to recognize the appropriateness of an immediate review of important federal questions. See *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469, 476-87 (1974).

The Petition for Certiorari (pp. 34-35) points out that the question whether all of United Methodism is suable as a monolith cannot effectively be reviewed after a final judgment, because the state courts may require the denomination to waive the capacity question in order to avoid entry of a default. *McCorkle* v. *City of Los Angeles*, 70 Cal. 2d 252, 257-58, 449 P.2d 453 (1969). Indeed, respondents sought entry of such a default during the pendency of this petition just as they have pursued a default judgment in the related *Trigg* case, also pending on Petition for Writ of Certiorari. See Supplemental Statement and Brief of Petitioners (gray cover) at 1-2; also, Supplemental Statement and Reply Brief in *Trigg* (red cover) at 1-2. By

these actions and by their present concession of finality, respondents have made clear their belief that this Court can review the questions raised by the petition only if it does so now.

II.

RESPONDENTS' BRIEF ILLUSTRATES THE DENIALS OF DUE PROCESS WHICH SUIT AGAINST THE DENOMINATION WOULD IMPOSE.

The keystone of respondents' case in the California Court of Appeal was their advocacy of a "common purpose-common name" test for conferring legal entity status on a gathering sought to be sued as an entity. That court adopted respondents' theory and applied it to the entire United Methodist denomination. 90 Cal. App.3d at 266; App. A. to Pet. for Cert. at A-8, 9. The Court of Appeal further stated that the meaning of "unincorporated association" was solely a legal question, the only issue to be determined —that the relevant facts were not in dispute. 90 Cal.App.3d at 264; App. A. to Pet. for Cert. at A-5. Nevertheless, respondents now appear to have abandoned the "common purpose-common name" test which they originated. In response to petitioners' arguments (Pet. for Cert. at 22-23) that this rule is without precedent and would lead to absurd and manifestly unfair consequences in litigation, respondents offer not a word of defense.[1]

Nor do respondents seriously address the three specific areas in which due process is offended, in the present case, by requiring the United Methodist Church to litigate as an entity.

1. *Inability to Conduct Litigation.* The denomination has no central executive capable of speaking for or directing

[1] Instead, respondents seek to rely upon the "facts" found by the Court of Appeal, even though California law requires acceptance of the trial court's findings, which were in petitioners' favor and resulted in dismissal of the United Methodist Church.

its 45,000 jural units and 10 million members. See App. F to Pet. for Cert. at A-28 to A-39. For this reason, petitioners have argued that the collective denomination, as a practical matter, cannot consult with counsel, respond to widespread discovery, enter into stipulations, or otherwise engage in litigation in a meaningful way. Pet. for Cert. at 26-27. Respondents fail to explain how a defense could be conducted in this case.

The fact that the United Methodist Church has been categorized as hierarchial for purposes of resolving local church property disputes (Resp. Br. at 18-19) has no bearing on the separate issue of whether it has a central executive capable of conducting litigation. Thus, in *Clay* v. *Crawford,* 298 Ky. 654, 183 S.W.2d 787, 800 (1944), the Kentucky Court of Appeals found that while all the units of the Methodist Church are "parts of an ecclesiastical system," the denomination's form of government is "connectional . . . with the congregations acting through local officers having a considerable degree of autonomy in secular matters."

Respondents' suggestion (Resp. Br. at 20) that the denomination's General Council on Finance and Administration (GCFA) can act as a central litigation agent is simply unsupportable. GCFA, like all other constituent units of the denomination, is without power to speak or act for the denomination as a whole. See Pet. for Cert. at 26. Its occasional reimbursement of the legal expenses of United Methodist units or officials, including the present petitioners, does not contradict this limitation, nor does it make the entire denomination a jural entity. It would be totally inconsistent with GCFA's traditional function and authority to become a litigation agent by appearing for the entire connection of United Methodism, over which it has no control, and for which it has no right to speak. See Decision No. 458 of Judicial Council of United Methodist Church, App. E to Pet. for Cert. at A-27.

Finally, respondents' startling assertions (Resp. Br. at 20-21) that a special session of the General Conference could be called to organize a defense of the denomination would involve precisely the sort of forced reorganization of a religious system that the First Amendment forbids. See pp. 9-10, *infra*. Although all of its constituent units are fully amenable to suit and capable of defending themselves, the composite United Methodist denomination, as it has been organized for the past 200 years, cannot, in fact, respond as an entity to a damage action.

2. *Adjudication In Absentia.* Because the denomination does not hold any common "associational" assets, petitioners have pointed to a second due process denial: judgment against the denomination could be enforced only against the property owned by the separate units within the denomination, all but four of which are not parties. The thousands of unnamed units, after any judgment against the denomination, would be subject to satisfaction proceedings in which it would be alleged that their properties were held by them as agent or *alter ego* of the United Methodist denomination. The issues of liability would have long before been concluded in their absence. Pet. for Cert. at 23-24. Respondents reply that this concern is premature (Resp. Br. at 10), in effect urging a course of "litigating now and determining later" who are the objects of suit. Yet the present danger of judgment *in absentia* must be considered. If respondents are not seeking to enforce a judgment against assets owned by separate units of the denomination, there would be no reason for their joining the denomination as a party. In fact, by coyly denying (Resp. Br. at 11) that they are seeking recovery against the ten million *individual members* of the denomination (a proposition not asserted by petitioners), respondents clearly imply a strategy of collecting from the denomination's annual conferences, general boards, and other units which bear the denominational name.

3. *Prejudgment.* Respondents themselves have demonstrated the third due process denial implicit in making the United Methodist Church a party defendant in this action: that critical factual allegations of agency and *alter ego* will be prejudged. The respondents argue that the entire denomination must be made a party because the four [redacted] incorporated denominational units named as defendants have denied responsibility for the financial difficulties of Pacific Homes. Resp. Br. at 17-18. Respondents apparently seek judgment against the denomination as an alternative to proving that the four defendant units were responsible for contracts of Pacific Homes. Thus, in a recent colloquy in the trial court, respondents' counsel, in response to the court's question about the application of his *alter ego* allegation to one of the four religious units named as a defendant, announced his reliance upon a sort of "seamless web" theory: "[T]he UMC is an integrated ecclesiastical religious situation [sic], of which its subordinate parts are part of one whole, under central denomination and control." Tr. of Proceedings, Oct. 23, 1979, at 64. This fusing of a vast connection of separate units into a single party defendant portends grave difficulties in the context of respondents' vicarious liability claims against defending religious units. If the denomination is forced to appear before a jury as a unified entity, in the very act of litigating as a party, the traditional distinctions between separate jural units would be blurred, providing escape from the need for proof of agency and control.[2]

Respondents do not need to force the United Methodist Church into the case as a defendant in order to accomplish any legitimate litigation aim. They will not be precluded,

[2] In *Roman Catholic Archbishop of San Francisco* v. *Superior Court*, 15 Cal. App. 3d 405 (1971), the California Court of Appeal would not sanction an "indivisible whole" theory asserted against the Roman Catholic Church. Respondents' claims should be subject to the same standard.

absent the denomination as a defendant, from obtaining any discovery, since the denomination as such holds no documents and has no officers. Its units and their officers are all separately discoverable and many have been subjected to discovery, producing large volumes of documents. Reniche Affidavit dated June 7, 1979, at 5. Nor will respondents be precluded from showing (if it be true) that any given unit within the denomination directed, approved, ratified, had knowledge of, or was otherwise responsible for the financial activities of Pacific Homes. The absence of the denomination will simply deprive respondents, as due process requires, of a default judgment against a defendant unable to represent itself.

III.

RESPONDENTS' BRIEF ILLUSTRATES THE RESTRAINTS ON THE FREE EXERCISE OF RELIGION WHICH THE DECISION BELOW WOULD IMPOSE.

Respondents have denied that the decision below presents any affront to the First Amendment guarantees of religious freedom. They label this case as a "purely secular dispute." Resp. Br. at 1, 13. In so doing, they fail to recognize that because an appraisal of United Methodist polity is necessary for determining whether the denomination is a suable unincorporated association, this case involves an essentially religious inquiry. While petitioners have never sought rubber-stamp acceptance of their experts' interpretations, they have said that, in a case which involves important questions of ecclesiastical polity, respondents' failure to support their contentions with religious expertise invites constitutional error. See Pet. for Cert. at 36-37. Such error, in the form of unassisted judicial interpretation of sensitive ecclesiastical questions, is presented here. The result is the imposition on the United Methodist Church of a unified authoritarianism which it has never adopted and which is contrary to its self-understanding.

Respondents continue their practice of depicting the denomination's organization according to their own unsupported interpretation of church documents. Thus, for example, respondents repeatedly imply central control by advising this Court (Resp. Br. at 1, 17, 18) that contracts with the residents of Pacific Homes were made "in the name of the United Methodist Church." These statements are false. Plaintiffs have not produced, nor could they ever produce, any life care or other contract containing language even implying such a relationship. All contracts were made solely with Pacific Homes, a California not-for-profit corporation.

Similarly, respondents suggest (Resp. Br. at 5) that one unit of the denomination, the Health & Welfare Certification Council, has the power to give or withhold permission for a local institution to use the name "The United Methodist Church." The Council has no such power, nor does any other unit in the denomination. (Deposition of Charles Frazier at 40, 43.) There are numerous homes, hospitals and other institutions in Annual Conferences which have not sought "affiliation" or "certification" status, which cannot be mandated to do so, and, nevertheless, freely identify themselves as United Methodist related activities.

Respondents' claim (Resp. Br. at 5) that "the UMC has vigorously protected its 'Methodist' trademark" is also a misstatement. First, "The United Methodist Church" is certainly not a registered trademark. Second, respondents have again resorted to their technique of describing any action by a local unit as that of "UMC." It was GCFA which attempted by letter to persuade a commercial insurance company to desist from describing itself as the "United Methodist Church Insurance Program." This brief exchange of correspondence between a unit of the denomination and an insurance company is hardly tantamount to a "UMC"

practice of "vigorously protect[ing] its trademark" or evidence of entity status.

Respondents' misinterpretation of church documents is, however, only a predicate to the radical imposition they propose—a total restructuring of United Methodist polity. Their brief asserts (Br. at 20-21):

> "[T]he General Conference can act to defend the UMC's interests. The Council of Bishops, which is charged with 'oversight of the . . . temporal affairs of the whole Church', can convene special sessions of the General Conference of the UMC. Thus, even under petitioners' view, the mechanics exist for conducting a defense of the UMC." (Citations omitted.)

Respondents apparently suggest, in response to their naming the whole denomination as a defendant, that (1) the Council of Bishops must call an extraordinary General Conference, assembling delegates from around the world, (2) the General Conference, in turn, must propose a constitutional amendment creating a centralized church with power to speak and act for all its members and constituent units and to direct their conduct, and (3) the 114 annual conferences must meet and approve this amendment. All this could be done, even to the point of amalgamating the entire connection into a single corporation. The denomination could, by the procedures suggested by respondents, abandon any of its historic choices and tenets. But for a state to force such changes in the basic polity of a religion is obviously forbidden by the First Amendment. "Religious freedom encompasses . . . matters of church government as well as those of faith and morals." *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952).

Since respondents can fully litigate their claims against the individual units of the denomination, the imposition on religious freedom which they propose should not be countenanced. *Wisconsin* v. *Yoder*, 406 U.S. 205, 215 (1972).

IV.

RESPONDENTS' DIVERSIONARY ASSERTIONS OF FRAUD ARE BOTH UNFOUNDED AND IRRELEVANT.

Respondents' brief sets forth in detail what they take to be a conspiracy on the part of United Methodism to defraud the elderly. Resp. Br. at 3-7. Respondents allege, in effect, that the millions of individuals and thousands of Church units which have made up the denomination for the past twenty-five years were engaged during that period in a concerted effort to profit by bilking old people; that victims were lured by promises of a "Methodist" Home, deprived of their life savings, and then left destitute and homeless. These outrageous charges are wholly false, and wholly unsupported by any material in the record of this case.

In fact, discovery indicates that the Methodist affiliation of Pacific Homes influenced the decision of very few residents to enter the Homes. Over three-fifths of the residents were not Methodists. No one has been required to leave the Homes for want of funds, due to an emergency relief fund established by concerned United Methodists of the Pacific and Southwest Annual Conference. Aff. of Randall Phillips dated June 12, 1979. Moreover, that Conference, with which the Homes have been affiliated for many years, has made extraordinary financial sacrifices in an effort to stabilize the Home's finances, including loan guarantees of $12 million, and a Chapter XI plan of arrangement offering to raise an additional $9 million. This plan was approved by 91% of the residents of the Homes who voted on it, and was not put into effect largely because of fraud claims filed in the Bankruptcy Court by respondents' counsel. Documents on file in "In Re Pacific Homes", Bankruptcy file No. 77-01667 (C.D. Calif.).

Lacking basis in the record in order to make their charges of fraud, respondents were required to quote at length from

a recently issued report by one whom they assert to be the "independent" Chapter X trustee of the Homes. Resp. Br. at 7. The trustee, however, is anything but independent. He is the plaintiff in his own $50 million fraud action against the United Methodist Church and has been allied closely with the respondents herein. His theory of action against the denomination as an "unincorporated association" is identical to that advanced by respondents. He relies largely on their discovery, as he conceded in the bankruptcy court. Plaintiffs' Consolidated Memorandum of June 22, 1978, filed in Bk. No. 77-01667, at 35-36. The trustee thus has a substantial personal stake in establishing both that the denomination may be sued as an unincorporated association and that it was guilty of wrongdoing. His report, rather than recounting developments in the reorganization of the homes, is devoted almost entirely to assailing all of United Methodism. While venting these scandalous charges, however, the trustee recognized the absence of actual proof with his disclaimer that "no factual information is to be construed as a representation." Trustee's Report, at 6.

Respondents' assertions, in any event, have nothing to do with the question of whether the United Methodist Church should be pressed into the mold of a litigating entity in this action; and hence such assertions have no place before this Court. These claims, presumably, will be aired at trial, subject to proof, if any, and cross-examination. At trial, and not here, those who were responsible for the operation of Pacific Homes will respond by showing the compassion and concern of United Methodists for the elderly. Here, petitioners simply ask that the trial not be conducted in a manner fundamentally unfair to the many individuals and jural units that make up United Methodism, or under a procedure which would require them to alter the fundamental nature of their Church.

CONCLUSION.

For the reasons stated above and in the Petition for Certiorari filed herein, petitioners respectfully request that the writ be granted.

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MOTION FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 79-245

FRANK T. BARR, et al., *Plaintiffs,*

vs.

THE UNITED METHODIST CHURCH, et al., *Defendants.*

MOTION OF THE ASSOCIATION OF UNITED METHODIST THEOLOGICAL SCHOOLS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI AND BRIEF FILED IN SUPPORT THEREOF

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Pursuant to Rule 42 of the Rules of this Court, The Association of United Methodist Theological Schools ("The Association") hereby moves for leave to file a brief, a copy of which is annexed hereto, as *amicus curiae* in support of the Petition for Writ of Certiorari filed by Petitioners Charles F. Golden, Paul W. Milhouse and James M. Walton-Myers, being those persons upon whom service of process was attempted on behalf of The United Methodist Church, a named defendant in the underlying case.

The nature of the interest of The Association in this case arises out of the interest of its component members. The Association is a voluntary unincorporated association composed of thirteen graduate schools of theology approved by the University Senate and by the Division of Ordained Ministry of The United Methodist Church for "affiliation" with The United Methodist Church. The member institutions of The Association are as follows: Boston University School of Theology, Boston, Massachusetts; Drew University, The Theological School, Madison, New Jersey; Duke University, The Divinity School, Durham, North Carolina; Emory University, Candler School of Theology, Atlanta, Georgia; Gammon Theological Seminary, Atlanta, Georgia; Garrett-Evangelical Theological Seminary, Evanston, Illinois; The Iliff School of Theology, Denver, Colorado; Methodist Theological School in Ohio, Delaware, Ohio; Perkins School of Theology, Southern Methodist University, Dallas, Texas; Saint Paul School of Theology Methodist, Kansas City, Missouri; School of Theology at Claremont, Claremont, California; United Theological Seminary, Dayton, Ohio; Wesley Theological Seminary, Washington, D.C. "Affiliation" is a requirement for eligibility for receiving donations from the General Conference and from any of the Annual Conferences, or United Methodist general boards, foundations or other agencies. The chief executive officer of each institution represents the school in The Association. Eight of these institutions are independent corporate entities; the remaining five are parts of larger universities which are also independent corporate entities. The function of the schools is to provide graduate-professional training to students with a vocation to the Christian ministry.

The interest of The Association on behalf of its members is as follows: The schools receive financial support from members of the churches through annual and general conferences and other agencies of the denomination. In return the schools provide a resource for the training and education of ministers and for research and scholarship in areas of concern to the denomination in fulfilling its stated mission as an arm of Christ's church in the world. Failure to review and reverse the lower court decision will inhibit the religious training of ministers of the denomination through alteration of the denomination's style of life and operation; adversely affect the financial security of these institutions; and cause the drying up of sources of charitable giving both within and without the denomination which could result in the collapse of these institutions. This would all be accomplished not by direct claims against the institutions but by a judgment against the denominational name and flowing downward from that against the institutions.

The unprecedented attempt here to lump all United Methodist units together and treat their individual assets as association assets of some superordinate fictional entity called "The United Methodist Church" poses a direct threat to the tradition of charitable giving to support worthy causes in general, and particularly to the sources of support necessary for the continuation of private education, including theological education, in the United States.

One impact of the decision below might be to transform and reorganize The United Methodist Church into a polity that ignores the more than 200 years of Methodist development and tradition. This would be

contrary to the anticipation and goals of students presently enrolled in or contemplating enrollment in these theological schools preparing for the ministry. These students have no connection with the subject matter of the $366 million claim arising out of the Pacific Homes Corporation lifetime care contracts. Nevertheless, the decision below would have a serious and blighting effect on their careers, subjecting them to the taint of the fraud allegation, the possibility of a substantial judgment, and the prospect of an altered religious polity. This is a threat to their commitment and idealism as well as that of the ten million persons who call themselves United Methodists.

The adverse impact presented by the decision below which includes a religious denomination under the term "unincorporated association" should be immediately rectified so as to prevent disastrous impact upon members, bodies and educational institutions such as the members of The Association in continuing their work in the religious education field.

The Association believes that its interest will not adequately be presented by the parties since the decision below will adversely affect religious educational training, the financial security of these institutions and the charitable giving necessary for the operation of the schools, and these aspects will not be directly addressed in the other briefs. The purpose of the brief for which leave to file is sought herein is to supplement the briefs previously filed on behalf of petitioners and other *amici curiae*.

The brief will address four principal points as follows: (1) the adverse effect of the lower court decision

upon students being trained for the ministry in United Methodist theological schools, and the questions raised by the decision under the Establishment and Free Exercise clauses of the First Amendment; (2) the adverse effect of the lower court decision on the assets and property of United Methodist schools and other separate denominational institutions, boards and the like, and the questions raised by the decision under the Due Process clause of the Fourteenth Amendment; (3) the immediate and disastrous effect that the failure to reverse would have upon charitable giving by local churches and others to theological schools affiliated with The United Methodist Church, thereby constricting the free exercise of religion by damaging the vital function of education of its ministers; and (4) the need for immediate review by this Court in order to avoid irreparable harm to the theological schools and to the denomination during *lis pendens*.

There is a related matter coming into this Court in a petition for Writ of Certiorari which has been filed in *Milhouse, et al.* v. *United States District Court, et al.*, Supreme Court of the United States, Docket No. 78-1855 (the "*Trigg* case"). The essential issues raised in this petition are also raised in that case, and it is respectfully requested that the *Trigg* matter be considered and consolidated with this case by this Court.

Counsel for petitioners have consented to this Motion pursuant to a letter which has been filed with the Clerk of the Court. The consent of counsel for respondents was requested but has not been forthcoming.

Respectfully submitted,

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Supreme Court of the United States

All Counsel Listed on the Annexed Certificate of Service

TABLE OF CONTENTS

Page

BRIEF OF THE ASSOCIATION OF UNITED METHODIST THEOLOGICAL SCHOOLS IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI 1

INTEREST OF *Amicus Curiae* 1

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 2

ARGUMENT

Point I- The Court should grant review in this case because the imposition by the Court below of a hierarchical structure on The United Methodist Church changes the denomination's historical connectional structure by judicial fiat and thereby raises important questions of first impression under the Establishment and Free Exercise clauses of the First Amendment applied to the states by the Fourteenth Amendment. Students who chose to enter training for the ministry in the United Methodist Schools because of the style and method of life involved in the denomination will be disaffected if the nature of the denomination is changed in violation of their rights of free exercise of religion 3

A. Background and impact on constitutional guarantees 3

B. Constitutional principles 8

Point II- The assets and property of United Methodist schools and separate denominational institutions, boards and the like, should not be placed in jeopardy and subject to a broadside judgment against the loosely designated "The United Methodist Church"

Page

in violation of their Fourteenth Amendment rights not to be deprived of their property without due process of law 17

A. Historical background 17

B. Constitutional principles 19

Point III- Failure to reverse will have an immediate and disastrous effect upon charitable giving by local churches and others to theological schools affiliated with The United Methodist Church, thereby constricting the free exercise of religion by damaging the vital function of education of its ministers 20

Point IV- Immediate review by this Court is needed in order to avoid irreparable harm to the theological schools and to the denomination during *lis pendens* 21

CONCLUSION 23

TABLE OF AUTHORITIES

CASES:

General Council on Finance and Administration v. Superior Court, —— U.S. ——, 99 S.Ct. 35 (1979) 22

Jones v. Wolf, —— U.S. ——, 99 S.Ct. 3020 (1979) ...8-9, 10-11, 16-17

Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in North America, 344 U.S. 94 (1952) 8, 12-13

Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960) 13

Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367 (1970) 8

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969) 8

Page

Serbian Eastern Orthodox Diocese for the United States of America v. Milivojevich, 426 U.S. 696 (1976) 8

Watson v. Jones, 80 U.S. (13 Wall.) 679 (1871) 13

MISCELLANEOUS:

The Book of Discipline of the United Methodist Church (1976) 4, 9, 14, 17

United Methodist Constitution 5

IN THE

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BRIEF OF THE ASSOCIATION OF UNITED METHODIST THEOLOGICAL SCHOOLS AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

INTEREST OF *AMICUS CURIAE*

The interest of *amicus curiae* is set forth in the Motion of The Association of United Methodist Theological Schools For Leave To File Brief As *Amicus Curiae* In Support Of Petition For Writ of Certiorari, and will not be reproduced here.

STATEMENT OF THE CASE

The statement of the case contained in the Petition for Writ of Certiorari ("Petition") is adequate and complete and need not be duplicated at length here. Succinctly, the Petitioners, individuals upon whom

service of process was attempted in the name of The United Methodist Church ("the denomination") moved to quash service upon them and dismiss the denomination as a party defendant. The trial court, Superior Court of California, San Diego County, Honorable Ross G. Tharp, J., entered a Minute Order decision granting Petitioners' motion on the grounds that the denomination "is no more than a 'spiritual confederation' and is not a jural entity or unincorporated association subject to suit" under the California Code of Civil Procedure and that a contrary decision would "have a chilling effect on all churches and religious movements by inhibiting the free association of persons of similar religious beliefs." (Appendix B of the Petition at A-22 to 23.) The California Court of Appeal, Fourth Appellate District, Division One, reversed. *Barr v. United Methodist Church,* 90 Cal. App. 3d 259, 153 Cal. Rptr. 322 (1979) (Appendix A to Petition), and the California Supreme Court denied hearing. Subsequently, Petitioners filed the Petition for review by this Court and filed an answer to the consolidated amended complaint under protest and in order to avoid the entry of a default against the denomination.

SUMMARY OF ARGUMENT

The organization of The United Methodist Church ("the denomination") is connectional, not authoritarian or hierarchical. This organization arises out of the historical development of the denomination and is inextricably bound up with its doctrines and beliefs. This unique form of organization is jeopardized by the lower court decision, which seeks to reorganize the denomination into a unitary, centralized structure capable of defending itself as a single jural entity.

The decision violates the establishment and free exercise clauses of the First Amendment as applied to the states by the Fourteenth Amendment and raises serious questions concerning the scope and nature of permissible scrutiny by the civil courts of forms of religious organization. The impact of the lower court decision on United Methodist institutions and on the tradition of private chartiable giving in the United States in general could be devastating. Immediate review of the decision is required to prevent further harm to these institutions and traditions.

ARGUMENT

Point I

The Court should grant review in this case because the imposition by the Court below of a hierarchical structure on The United Methodist Church changes the denomination's historical connectional structure by judicial fiat and thereby raises important questions of first impression under the Establishment and Free Exercise clauses of the First Amendment applied to the states by the Fourteenth Amendment. Students who choose to enter training for the ministry in the United Methodist schools because of the style and method of life involved in the denomination will be disaffected if the nature of the denomination is changed in violation of their rights of free exercise of religion.

A. Background and Impact on Constitutional Guarantees

The issue of how the Church or a church should be organized has been one of the most divisive in the history of Christendom. The reason for this is that the nature of the organization is intimately bound up with

the doctrinal question of the individual's relationship to God and what the church's intermediary role in that relationship should be. In England, where The United Methodist Church finds its origins, this issue was the subject of bitter contention for more than two hundred years following the Protestant Reformation. The central point of dispute was the role of the episcopacy as intermediary between the person and God. Among the consequences of this contention were the so-called Puritan revolution, the English civil war, and the so-called Glorious Revolution. The First Amendment to the Constitution and its free exercise and establishment clauses were among the fruits of this strife, and resulted from the hard-won lessons learned from it.

A Court is simply not free to roam around in the *Book of Discipline* as if it were the bylaws of a secular unincorporated association, construe the terms therein as if they were terms whose meaning is determined by the secular law, ignoring the historical context in which the religious association adopted its form of organization and rules of discipline. The connectional organization of The United Methodist Church (the "denomination") is rooted in the foundation of the Church by John Wesley, a clergyman of the Church of England, in the mid-Eighteenth Century. From England, Methodism spread to Ireland and then to America. In the beginning, Wesley thought of his people not as constituting a church but simply as forming so many societies composed of people inspired by his sermons and desiring to adhere to the Methodist discipline, which offered active spiritual participation in contrast to the lifeless ritualism into which it seemed that the Church of England had lapsed. The preachers were not ordained, and the members were required to

receive the Sacraments in the Church of England. The yearly meetings of people called Methodists are still held in various places (now about 73 places in the United States of America plus additional places in other countries) and called "annual conferences", which are still the fundamental bodies of the Church (United Methodist Constitution, Division Two, Section I, Article IV; also Section VII, Article II). There is not now and never has been one national or international headquarters, central office, chief executive office or officer, or any controlling entity representing the entire United Methodist Church. Only the General Conference may speak for the denomination. That General Conference is a quadrennial meeting lasting about two weeks consisting of no less than 600 nor more than 1,000 delegates, one-half of whom are ministers and one-half of whom are laity. The General Conference is given legislative power over all matters distinctively connectional, but the powers are restricted and limited. Powers not specifically given to the General Conference are to reside in the annual conferences, individually and separately.

Methodist units are incorporated for specific functions and purposes, such as holding property for preaching and worship, or for the fulfillment of educational, charitable, service, or missionary functions and purposes. The General Conference is not now and never has been incorporated as a legal entity nor is it a continuing control body. Its membership changes substantially from general conference to general conference. To structure the denomination according to secular legal views rather than ecclesiastical ones would do violence to established church polity and to the denomination's self-understanding. The avoidance of

incorporation is and has been historically a deliberate choice consistent with the nature of the connectional relationship. For the early American church, valid meetings were held in England as well as in America. The equal validity of these several meetings is of major significance, establishing a loose relationship or "connection" but maintaining the identity and independent authority of each "meeting" or "conference". The validity of these several yearly meetings or conferences shows that there is no central authority or unified body which is valid for the whole movement. This principle has remained true and effective from that day until now, and it is still valid and characteristic of United Methodism. The courts do not understand this.

As to the relationship of the theological schools to the denomination, the oldest standardizing body for higher education in the nation is the University Senate of The United Methodist Church. This body is recognized by the General Conference as the body to determine which educational institutions may claim affiliation with The United Methodist Church. Recognition of affiliation gives the institution the right to seek financial support from United Methodists and from agencies of The United Methodist Church. "Affiliation" in United Methodism does not connote control, domination or ownership of the "affiliated" unit or institution. There is no financial responsibility or legal responsibility given to the institution on behalf of the denomination, or given to the denomination on behalf of the institution. The use of the name "United Methodist" does create a fellowship, an identity, a connection, a common purpose for worship and service. Individual church bodies, incorporated under law and functioning under their charters and according to stated purposes,

do now and should continue to be held legally responsible under the law. There are thousands of those units in United Methodism but collectively they are not a single body called an "unincorporated association" or otherwise.

The history and practice of The United Methodist Church is not that of an existing overarching entity which has responsibility for any or all church units which bear the United Methodist name; each body, agency or organization, including those within this Association of United Methodist Theological Schools, bears its own responsibility.

There was nothing known as "The United Methodist Church" until 1968 when members of the denominations known as "The Methodist Church" and "The Evangelical United Brethren Church" merged to form "The United Methodist Church," at which time there were agreements made between the two groups to operate together under the common name. Historically, the composition of the denomination has been extremely fluid and it has and continues to function under various forms of the connectional church structure as above described.

Students who choose to enter training through the United Methodist schools do so in large part because of the style and method of life involved in the manner of operation of The United Methodist Church as well as its philosophy of a loose horizontal structure rather than a vertical one. If the nature of the denomination should be changed by judicial fiat to be a monolithic structure, this would alter their religious preference, desires and goals in violation of their First Amendment rights of free exercise of religion. Furthermore,

a charge of fraud against a whole denomination not organized with an executive to defend and speak for it will have an immediate unfavorable, seriously damaging impact on members of the denomination and would-be ministers. The practical effect is a final one at this stage since to litigate the matter of standing over many years will mean that a whole theological school generation will be affected in the interim.

B. Constitutional Principles

This case and the related *Trigg* case raise what appears to be a question of first impression in this Court concerning the application of the establishment and free exercise clauses of the First Amendment as applied to the states under the Fourteenth Amendment. Heretofore, the inquiry concerning to what extent the civil courts are permitted to intrude into the area of religious doctrinal disputes has taken place in the context of intra-church disputes. *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94 (1952), where the dispute was between two Russian Orthodox factions over the right to the use and occupancy of church property in New York; *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Church,* 393 U.S. 440 (1969), involving a property dispute occasioned by the withdrawal of local churches from a general church organization; *Maryland and Virginia Eldership* v. *Church of God at Sharpsburg, Inc.,* 396 U.S. 367 (1970), involving a property dispute between a general church and secessionist congregations; *Serbian Eastern Orthodox Diocese* v. *Milivojevich,* 426 U.S. 695 (1976), involving the removal and defrocking of a bishop and the reorganization of a diocese; and *Jones* v. *Wolf,* —— U.S. ——, 99 S. Ct. 3020 (1979), involving a property dispute between two local church factions. In all of these cases, the courts have been presented with a situation where their task was to ratify a decision taken by a church group; that is, two solutions were presented to the court by church groups and the court was to choose one of them. By contrast, this case involves an atttempt by outside, non-church plaintiffs, and by the lower court, to impose a reorganization from outside, or to impose their conception of the reality of the church organization upon the church. It is submitted that such an intrusion poses the threat of the most serious kind of state interference in church affairs since the Constitution was ratified, and it appears to The Association of United Methodist Theological Schools ("The Association") that to countenance it would constitute no less than the establishment of a church order by judicial fiat.

In the present posture of the case, certain high officials of United Methodist agencies have been told that they are agents of The United Methodist Church and as such must answer on its behalf. Under the Discipline of The United Methodist Church, however, they are forbidden to do this and as a plain matter of fact they cannot do this. "No person, no paper, no organization has the authority to speak for The United Methodist Church, this right having been reserved exclusively to the General Conference under the Constitution." *The Book of Discipline of The United Methodist Church* (1976), ¶ 612(1). The United Methodist Church simply has never been and is not organized in a fashion that permits these officials to act for the denomination, to speak for it or to bind the members by their acts. Although the Petitioners have been constrained to file an answer in order to avoid an entry of default against

the denomination, they have done so under protest, denying that they can represent the denomination.

This case, like the related *Trigg* case for which a Petition for Certiorari is also pending before this Court, puts into sharp focus the constitutional problem posed last term by the dissenting members of this Court in *Jones* v. *Wolf*, —— U.S. ——, 99 S.Ct. 3020 (1979). *Wolf* held that a state could constitutionally adopt "neutral principles of law", for example, "well-established concepts of trust and property law familiar to lawyers and judges," as a means of adjudicating intra-church property disputes. However, the case was remanded to the Supreme Court of Georgia for an articulation of the Georgia law upon which it had grounded its decision that the right to possess the disputed church property belonged to a schismatic faction consisting of the majority of the members of a local Presbyterian congregation. 99 S.Ct. at 3027-29.[1]

The dissenting members of this Court found this decision troublesome. The dissent suggests that the neutral principles approach is a sort of evidentiary rule, permitting examination of the religious documents of the church "in purely secular terms" only, in order to discover, for example, if an identifiable

[1] In essence, this Court approved the decision of the state court if based on a rebuttable presumption that the identity of the local church was determined by majority representation (presumably a neutral principle); on the other hand, if Georgia law required the determination to be governed by the ecclesiastical law of the Presbyterian Church, then the civil court must, under the First and Fourteenth Amendments, defer to the decision of the commission appointed by the Presbytery in order to avoid deciding questions of church doctrine. Note that this takes as a given that the organization of the Presbyterian Church is hierarchical.

trust has been created in them. The dissent set forth the Constitutional problem raised as follows:

> The constitutional documents of churches tend to be drawn in terms of religious precepts. Attempting to read them "in purely secular terms" is more likely to promote confusion than understanding. . . . Lacking [evidence cognizable under the neutral principles rule] a court will impose some rule of church government derived from state law. In the present case, for example . . . the Georgia courts could find no acceptable evidence of [the] authoritative relationship [between the Presbytery and the schismatic local church] and they imposed instead a congregational form of government determined from state law . . . The Georgia courts, as a matter of state law, granted control to the schismatic faction, and thereby effectively reversed the doctrinal decision of the church courts. This indirect interference by the civil courts with the resolution of religious disputes within the church is no less proscribed by the First Amendment than is the direct decision of questions of doctrine and practice.

99 S. Ct. at 3030 (Powell, J. dissenting).

It is respectfully submitted that the same constitutional proscription applies to the case at bar, even though the context is radically different. At least in *Wolf* the courts were confronted with a dispute requiring their adjudication for legitimate secular purposes, i. e., the need to determine the rights of possession of certain property. In the case at bar, no legitimate secular purpose has been achieved by the drastic reorganization of the United Methodist polity imposed by the Court of Appeal. Potential defendants are available to the plaintiffs without need to resort to reorganizing the United Methodist denomination.

Suppose that the General Assembly of the State of California had enacted legislation providing substantially as follows:

> The United Methodist Church is hereby constituted as a hierarchical church subject to the constitution and laws set forth in *The Book of Discipline*. There shall be three branches of United Methodist government: legislative, executive and judicial. The legislative shall be called the "General Conference." There shall be an executive board, called the "Council of Bishops," which shall be presided over by the "President of the Council of Bishops," who shall be the chief executive officer of the government. There shall be thirteen cabinet departments within the executive branch: Board of Global Ministries (department of state), General Council on Finance and Administration (department of the treasury), Board of Higher Education and Ministry (department of education) . . . . In the judicial branch, the highest court of appeal shall be called the "Judicial Council."

There is not much doubt that such legislation would be invalid under both the establishment and free exercise clauses of the First Amendment as applied to the states by the Fourteenth Amendment. In *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94 (1952) this Court struck down New York legislation purporting to designate the governing hierarchy to which all Russian Orthodox churches in the state were to subject themselves.

> By fiat [the statute] displaces one church administration with another. It passes the control of matters strictly ecclesiastical from one church authority to another. . . [The statute] directly prohibits the exercise of an ecclesiastical right, the Church's choice of its hierarchy.

344 U.S. at 119. And in *Kreshik* v. *St. Nicholas Cathedral,* 363 U.S. 190 (1960), this Court held that such an exercise of state power is proscribed regardless of whether the state acts through its legislative arm or through its judicial arm.

Yet, the legislative fantasy projected above approximates what the Court of Appeal has done in the case at bar. It has by judicial decision created a "United Methodist Church" which seems to be an amalgamation of the organizational principles of presbyterianism and the federal system of the United States. Whatever this creation by the Court of Appeal may be, it is not the ecclesiastical polity recognized and claimed by United Methodists as their own. To force them to adopt it would be intolerable as a matter of faith, as a matter of intellect and a matter of constitutional principle.

The possibility that a civil court endeavoring to interpret church doctrine could go astray was recognized by this Court over a century ago in *Watson* v. *Jones,* 80 U.S. (13 Wall.) 679 (1871):

> Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic law, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own.

80 U.S. (13 Wall.) at 729.

The perception of the *Watson* Court, including its recognition of the fact that the ecclesiastical law of a denomination is to be found in precedent, usage and custom as well as in any written constitution it may have, is amply borne out by the opinion of the Court of Appeal in the case at bar. Two examples will suffice.

Perhaps the strangest determination made by the Court of Appeal was that "a persuasive argument can be made that the Council of Bishops is equivalent to the Board of Directors of UMC." Appendix A of the Petition at A-11. The court grounded its determination on paragraph 525 of the *Book of Discipline* (the "*Discipline*") which states that the Council of Bishops is "the corporate expression of episcopal leadership in the Church and through the Church in the world." This betrays ignorance of the fact that a United Methodist bishop is not a cognate of a Roman Catholic bishop or a Protestant Episcopal bishop, and a similar misunderstanding of the meaning of "episcopal leadership" in the context of United Methodism. Methodists believe in the "general ministry of all believers," and, as stated in paragraph 110 of the *Discipline,* "There is but one ministry in Christ, but there are diverse gifts and graces in the Body of Christ (Ephesians 4:4-16). The general and representative [diaconal and ordained] orders of ministry in The United Methodist Church are complementary. Neither is subservient to the other." In short, bishops are ministers of the denomination in full connection, elected to perform a wide variety of special tasks, and accountable to a wide variety of church organizations; in order to understand what a United Methodist bishop is, it is necessary to understand that the denomination is a connectional, not a hierarchical one, and to understand what a connectional organization is.

Such an understanding cannot be achieved by trying to analogize the denomination with familiar secular organizational forms. The connectional organization of United Methodism is unique in all the world, finding its origins in the historical development of the denomination which is faintly sketched in Part A above. The failure of the Court of Appeal to grasp this is illustrated by the way its opinion consistently ignores the central role of the annual conferences in the denomination. Most striking is the manner in which the Court of Appeal treated the relationship between Pacific Homes Corporation and the Pacific and Southwest Annual Conference ("PSWAC"). Appendix A to Petition at A-14 to 16. Every item of evidence adduced in this section by the Court of Appeal indicates a close relationship between Pacific Homes Corporation and PSWAC. The Court of Appeal then concludes that this relationship requires that "UMC" be recognized as a legal entity. It seems that the Court simply fails to see that PSWAC, only one of over 100 worldwide annual conferences, is not the same as the entire denomination. Equally bizarre is the Court of Appeal's statement that "UMC is not congregational, i.e., the local church is not the highest authority in all matters of doctrine and usage. It is hierarchical. . . ." Appendix A to Petition at A-10. Again, the connectional system of annual conferences is not grasped. The court seems incapable of conceptualizing a polity that is neither strictly congregational nor hierarchical.

The Court of Appeal felt that no First and Fourteenth Amendment issue was raised by its decision. It reached this conclusion by framing the constitutional issue as if the Petitioners were seeking to use the First Amendment to immunize the units of the denomination

from civil suits involving secular disputes. Appendix A to Petition at A-18 to 19. Petitioners never sought such a goal. As has been said before, no one in the denomination seeks to escape liability where liability properly attaches.

The Court of Appeal concluded that its holding that the denomination was a suable entity was not a review of the denomination's polity nor a violation of the free exercise clause:

> There is no evidence to show that rendering UMC amenable to suit would affect the distribution of power or property within the denomination, would modify or interfere with the modes of worship affected by Methodists or would have any effect other than to oblige UMC to defend itself when sued upon civil obligations it is alleged to have incurred.

Appendix A to Petition at A-19. But obliging "UMC to defend itself" is precisely the problem, because it would require reorganizing the denomination into an organization in which some single entity or individual must answer for and defend it, which is forbidden by its doctrines.

Again, the problem was suggested by the dissent in *Jones* v. *Wolf*, —— U.S. ——, 99 S.Ct. 3020 (1979):

> The neutral-principles approach creates other difficulties. It imposes on the organization of churches additional legal requirements which in some cases might inhibit their formation by forcing the organizers to confront issues that otherwise might never arise. It could also precipitate church property disputes, for existing churches may deem it necessary, in light of today's decision, to revise their constitutional documents, charters, and deeds

> to include a specific statement of church polity in the language of property and trust law.

99 S.St. at 3031 n.2.

If this Court fails to grant review in this case, undoubtedly the United Methodist General Conference, when it next meets in 1980, wi' have to consider a wholesale redrafting of the *Discipline* to meet the exigencies of this litigation; and due to the constitutional guarantees of the First Amendment it should not be forced to do this. It is submitted that the religion clauses of the Constitution were framed in order to preserve a variety of forms of religious life. The decision below threatens one of these forms with extinction which it is respectfully submitted the Court should not permit.

Point II

The assets and property of United Methodist schools and separate denominational institutions, boards and the like, should not be placed in jeopardy and subject to a broadside judgment against the loosely designated "The United Methodist Church" in violation of their Fourteenth Amendment rights not to be deprived of their property without due process of law.

A. *Historical Background*

The first properties used primarily for Methodist purposes by John Wesley were various meeting rooms. Subsequently, he became concerned about the ownership of these properties and consulted three lawyers in London who prepared a model property deed to be used by Wesley's followers. The deed provided for specific individual trustees who would permit Wesley and those he appointed to use the property for denominational

purposes and after his death to permit the use of the property by "such persons as shall be appointed at the yearly Conference of the people called *Methodists,* in London, Bristol, Leeds, Manchester, or elsewhere . . ." The deed was printed in the 1763 minutes of the yearly Conference. The deed was enrolled in chancery under the hand and seal of Wesley, February 28, 1784. The earliest deeds to individual trustees for Methodist houses of worship in America were copied from the model deed used in England. The language of all the early deeds assumes a yearly meeting of Methodists but the meeting is not in one place only but in several places.

Property belonging to the denomination of United Methodists, whether real estate or personalty, has been primarily local. Local trustees are elected, according to the law of the church, to maintain that property and to see that it is used according to its designated purposes. Whenever property and/or monetary assets are set aside for use beyond the local churches, the property is designated for specified purposes and uses of annual, jurisdictional or general Conference Boards and other units, each of which is a jural entity. There is no overall title-holding unity called "The United Methodist Church" or by any other name. United Methodism maintains to this day a functional attitude toward property and funds. All property and funds of whatever kind are for the preaching of the gospel and the worship of God, and for the service of people and of the nation through charitable and service acts. Church property is to this day held in trust at the local and conference levels of mission consistent with the principles established in John Wesley's original "model deed."

B. Constitutional Principles

In the case at bar, the validity of that historic trust methodology is challenged. Funds voluntarily given for these specific charitable, educational or service functions could be diverted, according to the claims of plaintiffs, and used contrary to their designated purposes. Such claims are contrary to the meaning of connectionalism in United Methodism, are contrary to the polity and structure of United Methodism, and would if allowed to stand constitute a major hindrance to the charitable, educational and service activities of the Church.

If the Court should find that being related to the church and bearing the United Methodist name opens a church-related institution to levy for legal judgment entered against the denomination as a whole and unrelated to the institution's own life and activity, a school established for religious purposes might be rendered bankrupt. Out of prudence, schools may well be forced to consider dropping their church relationships in order to protect their assets and property from invasion and diversion. Considering the need of the church to have institutions for the training of its clergy and leadership, this possibility is disastrous.

If claims are allowed to stand against a denomination, not only will the self-understanding and organizational structure of United Methodism be changed but the charitable and philanthropic service of all national church bodies in the nation will be threatened and potentially ended. But there is relief to claimants having valid claims because individual church bodies, incorporated under law and functioning under their charters, are now and should continue to be held legally responsible under the law. There are thousands of those

units in United Methodism but collectively they are not a single body known as an "unincorporated association" or otherwise.

The assets and property of United Methodist schools and separate denominational institutions, boards, funds and the like should not be placed in jeopardy and made subject to a broadside claim through the medium of the loosely designated name of "The United Methodist Church" as this would be in violation of their Fourteenth Amendment rights not to be deprived of their property without due process of law. The points here raised apply with equal validity with respect to the numerous funds established by the annual and general conferences, such as the Ministerial Education Fund, the Black College Fund, the Temporary General Aid Fund and the like.

Point III

Failure to reverse will have an immediate and disastrous effect upon charitable giving by local churches and others to theological schools affiliated with The United Methodist Church, thereby constricting the free exercise of religion by damaging the vital function of education of its ministers.

The Association of United Methodist Theological Schools ("The Association") is composed of institutions which are approved by the University Senate and by the Division of Ordained Ministry of The United Methodist Church for "affiliation" with the denomination. The University Senate is an accrediting agency and the Division of Ordained Ministry is responsible for maintaining the educational standards of the United Methodist ordained ministry. "Affiliation" is a requirement for the receipt of financial support from

the various agencies of the denomination. The schools get financial support from the denomination directly from the annual conferences and, in addition, through the Ministerial Education Fund established by the 1968 General Conference in order to expand the financial support for recruitment and education and to equip the annual conferences to meet the increased demands on them in these areas. They receive an even greater share of their financial support from non-denomination sources. If the lower court decision is allowed to stand and assets of schools, boards, funds and the like are attachable, donations by Methodists and others to these church agencies, including the theological schools, will dry up, since no one will contribute to an organization which will be unable to use the money for the purposes intended and where there exists the threat that the funds donated will be diverted to pay claims against an unrelated organization.

Point IV

Immediate review by this Court is needed in order to avoid irreparable harm to the theological schools and to the denomination during lis pendens.

There is no question in this case of the membership of the denomination attempting to shield itself behind the First Amendment from liability in the civil courts for alleged wrongdoing. The separate United Methodist corporations and unincorporated associations are suable and can be held accountable. In fact, the Pacific and Southwest Annual Conference, the General Council on Finance and Administration, the Board of Global Ministries and the Division of Higher Education (all corporations) are already defendants in the underlying

case.[2] However, this case involves an unprecedented attempt in addition by an outside group to define a non-hierarchical religious denomination as a hierarchical one for its own convenience, and in the process to inflict upon innocent individual and corporate members of the deomination the penalties of alleged wrongdoing in which they were not involved and could not properly have been involved under the ecclesiastical law of the denomination.

The question raised in the Petition is a new one and of fundamental importance. If the civil courts are going to be free to inquire at large into matters of ecclesiastical polity and cognizance when purely secular disputes arise between third parties and religious associations (*See* Opinion of Mr. Justice Rehnquist as Circuit Justice in *General Counsel on Finance and Administration* v. *Superior Court*, —— U.S. ——, 99 S.Ct. 35, 38 (1979)), then surely the First and Fourteenth Amendments require that such an inquiry be fashioned in a manner and with guidelines calculated to lead to a realistic determination of the nature of the polity.

If immediate relief is not granted the theological schools and the denomination will suffer irreparable harm during *lis pendens* which might be a period of five years or more before the litigation is concluded. Adversely affected would be members of the denomination, students, schools, charitable donors, all the programs of social service, funds, agencies, boards, and other institutions of the Church. The impact on ten million Methodists, and other denominations, during

[2] Whether or not the trial court has personal jurisdiction over them all is a separate issue unrelated to the question raised by the Petition for Certiorari filed herein.

this interim period before the issue is resolved would be catastrophic. Therefore the issue should now be resolved.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be granted by this Court to review the judgment of the California Court of Appeal.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 79-245

THE UNITED METHODIST CHURCH, ET AL.,

Petitioners

-vs.-

FRANK T. BARR, ET AL.,

Respondents

BRIEF *AMICUS CURIAE* BY THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA

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INDEX

	Page
Interest of the amicus curiae	2
Questions presented	3
Constitutional and statutory provisions involved	4
Statement of the case	5
Reasons for granting the writ	6
1. The Organization of a Religious Denomination is the Product of Theological Understandings and Beliefs and Judicial Intrusion into These is Proscribed by the First Amendment	8
2. The Decision of the Court of Appeal, if Allowed to Stand, Would Unconstitutionally Mandate the Demise of Religious Denominations as They Now Exist	10
3. The Common-Purpose, Common-Name, Fairness Test Enunciated by the Court Below is Offensive to Amicus and to the Constitution . .	11
Conclusion	13

CITATIONS

Cases:

Barr v. United Methodist Church, 90 Cal.

Page

App.3d 259, 153 Cal.Rptr. 322 5,6
Cantwell v. Connecticut, 310 U.S. 296 . 4
Jones v. Wolf, ___ U.S. ___, 99 S.Ct. 3020 7,8
Metropolitan Baptist Church of Richmond, Inc. v Younger, 121 Cal. Rptr. 899, 48 C.A.3d 850 9
Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 . . 7
Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 7
United States v. Ballard, 322 U.S. 78 . 8,9
Walz v. Tax Commission of the City of New York, 397 U.S. 664 10

United States Constitution:
First Amendment 3,4,11
Fourteenth Amendment 4

Statutes:
California Code of Civil Procedure, Section 388 4,5

Miscellaneous
Sir Edward Coke, Institutes of the Lawes of England, Part II (1st ed. 1642) 9,10

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Consent for the filing of this brief amicus curiae has been obtained in writing from all attorneys of record on both sides of this case. Their original letters of consent have been filed with the Clerk of the United States Supreme Court.

INTEREST OF THE AMICUS CURIAE

The Baptist Joint Committee on Public Affairs consists of representatives elected by each of eight cooperating Baptist conventions in the United States: the American Baptist Churches in the U.S.A., the Baptist General Conference, the National Baptist Convention of America, the National Baptist Convention, U.S.A., Inc., the North American Baptist Conference, the Progressive National Baptist Convention, Inc., the Seventh Day Baptist General Conference, and the Southern Baptist Convention. These Baptist groups have a combined membership of some 27 million and have, throughout their history, evidenced a vital concern for the protection of religious liberty and the maintenance of a separation of church and state. It is the opinion of the Baptist Joint Committee on Public Affairs that both the principle of religious liberty and the constitutional doctrine of the separation of church and state are jeopardized by the decision by the Court of Appeal, State of California in the case at bar. The case at bar also involves a connectional rather than a congregational denominational polity and it is the opinion of the amicus that

the experience and insight of congregationalists will assist this Court and should be taken into consideration in a decision on the issuance of a Writ of Certiorari. If the Petition for Writ of Certiorari is granted, it is the intention of amicus to file an expanded brief in support of Petitioners' brief on the merits.

QUESTIONS PRESENTED

The case at bar raises two questions of primary concern to amicus:

1. Did the Court of Appeal, State of California make a judicial determination of relationships within the denominational structure of the United Methodist Church (U.M.C.) which was contrary to the First Amendment to the Constitution of the United States because (a) those relationships have developed within the U.M.C. in response to theological determinations and beliefs, and (b) the judicial determination was contrary to the nature of intradenominational relationships as officially described in The Book of Discipline of the United Methodist Church (1976)?

2. Did the Court of Appeal, State of California err when it applied the neutral distinctions between hierarchical and con-

gregational churches, developed by this Court to deal with conflicting claims of ownership of church property, to a fact pattern which did not involve ownership of property?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The case at bar involves the interpretation of the following provisions:

1. The religion clauses of the First Amendment to the Constitution of the United States as made applicable to the states by the Fourteenth Amendment. Cantwell v. Connecticut, 310 U.S. 296 (1940).

2. Section 388 of California's Code of Civil Procedure which provides:

> (a) Any partnership or other unincorporated association whether organized for profit or not, may sue and be sued in the name which it has assumed or by which it is known.
> (b) Any member of the partnership or other unincorporated association may be joined as a party in an action against the unincorporated association. If service of process is made on such member as an individual, whether or not he is also served as a person upon whom service is made on behalf of the unincorporated association, a judgment against him based on his personal liability may be obtained in the action, whether such liability be joint, joint

> and several, or several.

STATEMENT OF THE CASE

The statement of the case found in the Petitioners' brief (P.B.) pp. 4-17 is full. Investigation indicates that the statement is factually correct. There is no necessity to repeat the entire statement. However, there are some parts of it which, for the purpose of this brief, need to be emphasized.

1. The Court of Appeal, State of California in Barr v. United Methodist Church, 90 Cal.App.3d 259, 153 Cal.Rptr. 322 (1979), reversed the Minute Order decision of the Superior Court of California, County of San Diego (P.B., App. B). The Minute Order held that the U.M.C. is no more than a spiritual confederation and that it is not a jural entity or unincorporated association which could be sued under California's Code of Civil Procedure §388. "A contrary ruling would effectively destroy Methodism in this country, and would have a chilling effect on all churches and religious movements by inhibiting the free association of persons of similar religious beliefs" (P.B., A-22,23).

In its reversal of the Superior

Court's decision, the Court of Appeal, State of California made the determination that the U.M.C. is an hierarchical church (P.B., A-10). The court arrived at this conclusion despite evidence from historical documents and testimony of Methodist theologians to the contrary.

2. The Court of Appeal developed a common-purpose, common-name, fairness test which stated, "The criteria applied to determine whether an entity is an unincorporated association are no more complicated than (1) a group whose members share a common purpose, and (2) who function under a common name under circumstances where fairness requires the group be recognized as a legal entity. Fairness includes those situations where persons dealing with the association contend their legal rights have been violated" (P.B., A-8,9).

3. Throughout the entire history of the case there has been no plea for judicial immunity for those religious organizations which are admittedly jural entities.

REASONS FOR GRANTING THE WRIT

This Court has seen fit to make broad, rough discriminations between hierarchical and congregational churches in order to

settle disputes over the ownership of property within a single church or denomination [See, Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969); Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976); Jones v. Wolf, ____ U.S. ____, 99 S.Ct. 3020 (1979)]. While such generalizations about religious polity and ecclesiology may be useful to the judiciary as a rule of thumb in property disputes, they are inadequate, unjust, and unconstitutional when applied rigidly.

Denominational polity is diverse. There is a broad spectrum of religious organization which ranges from a rigid hierarchical polity on one extreme to totally independent individual congregational churches on the other. In between there are, inter alia, quasi-hierarchical, modified-hierarchical, connectional, and cooperating congregational churches. To force these and all of the other religious organizational permutations into two discrete, polar categories is to treat them unequally contrary to the strictures of the First Amendment. At the same time, the Constitution denies to the state the power to evaluate religious

doctrine or practices [See, Jones v. Wolf, supra, 99 S.Ct. at 3025].

The decision of the Court of Appeal, State of California has created a manifest injustice in the case at bar and should be reviewed by this Court for the following reasons:

I. THE ORGANIZATION OF A RELIGIOUS DENOMINATION IS THE PRODUCT OF THEOLOGICAL UNDERSTANDINGS AND BELIEFS AND JUDICIAL INTRUSION INTO THESE IS PROSCRIBED BY THE FIRST AMENDMENT.

The First Amendment does not raise an absolute bar against a court making decisions concerning denominational polity. In the face of offsetting testimony given by witnesses who are experts on a denomination's polity, in such cases as property or contract disputes, a court must decide on which of the expert testimony it will rely.

However, the Court of Appeal did not encounter conflicting expert testimony in the case at bar. Instead, its decision is based on its unilateral evaluation of religious doctrine and practice and manifests a rejection as untrue of the evaluation of the nature of Methodist ecclesiology given by those who are the experts on the doctrines and practices of that church. "When the

triers of fact undertake . . . [to determine the truth or falsity of belief], they enter a forbidden domain." United States v. Ballard, 322 U.S. 78 (1944) at 87. The Court of Appeal entered the forbidden domain.

California law also recognizes that such a forbidden domain exists. "'Ecclesiastical matters' ordinarily concern creeds and the proper mode of exercising one's belief, considerations of faith, including questions of what constitutes an essential of a church's faith, and matters of church discipline, tenets, and general polity; in such matters, the state, and its courts, have no legitimate concern or jurisdiction." Metropolitan Baptist Church of Richmond, Inc. v. Younger, 121 Cal.Rptr. 899, 48 C.A.3d 850 (1975) (emphasis added).

The common law requires that the state give deference to the polity determinations made by the churches. Sir Edward Coke, in his analysis of the "Articuli Cleri," stated, "And the opinion of Sir John Prisot, chief Justice of the common Pleas, is notable; To those laws which holy Church hath out of the Scripture, we ought to yield credit; for that (saith he) is the Common Law, upon which all laws are founded. . . ." II Coke,

Institutes of the Lawes of England 625 (1st ed. 1642).

Because ecclesiology is based on theological beliefs and understandings, the state is not a competent definer or interpreter of the nature and pattern of religious intraorganizational relationships. Unless this Court intervenes, the Court of Appeal's decision will be read as an invitation for in terrorem litigation against a new class of defendants and will lead to an unconstitutional entanglement of the state in the affairs of religion [See, Walz v. Tax Commission of the City of New York, 397 U.S. 664 (1970) at 670].

II. THE DECISION OF THE COURT OF APPEAL, IF ALLOWED TO STAND, WOULD UNCONSTITUTIONALLY MANDATE THE DEMISE OF RELIGIOUS DENOMINATIONS AS THEY NOW EXIST.

Judge Ross G. Tharp in his Minute Order (P.B., App. B) said, "If all members of a particular faith were to be held personally liable for the transgressions of their fellow churchmen, church pews would soon be empty and the pulpits of America silent." The only alternative to empty pews and silent pulpits would be the restructuring of the polity of a denomination, regardless of its theology, into either an authoritarian

hierarchy where no actions could be taken by anyone without consent of the final authority within the denomination or into isolated fortresses of religion which have totally abandoned any cooperative efforts between individual churches. The former structure would doom the denomination to inaction and decay. Under the latter, some individual independent churches would survive but the social and missionary work possible with cooperative efforts would be curtailed or eliminated.

Whether the demise of organized religion would be desirable or undesirable is a value judgment and is not justiciable under the Constitution of the United States. However, if the First Amendment forbids the state to be directly antagonistic to religion or to dictate directly the beliefs of a church or directly to establish a religion or directly to abolish a religion, it also forbids the state to do any of these things indirectly. The state may not do indirectly that which it is forbidden by the Constitution to do directly.

III. THE COMMON-PURPOSE, COMMON-NAME, FAIRNESS TEST ENUNCIATED BY THE COURT BELOW IS OFFENSIVE TO AMICUS AND TO THE CONSTITUTION.

The Court of Appeal's test can only be read to make all religious organizations into unincorporated associations subject to suit for wrongdoings of a single entity within the organization regardless of the polity of that organization (P.B., A-8,9).

Baptists are among the most determinedly independent of the congregationalists. They are non-creedal, and the local church is the ultimate authority on its beliefs and on the qualifications for church membership. No outside individual or group can select or dismiss a minister. No outside individual or group can require a local church to believe or do anything. Yet these independent churches do form cooperative associations, conferences, and conventions to pool resources in order better to carry out national and international mission enterprises. Those Baptist churches which choose to cooperate often use the name of the group of churches with which they are cooperating to identify themselves. Thus, a local church may declare, "We are an American Baptist church," or "We are a Progressive Baptist church," or "We are a Southern Baptist church."

All Baptist churches share a common purpose -- the spreading of the good news of

Jesus as Savior to the entire world. As has been shown, Baptists sometimes identify with a common name. Some local churches may violate the legal rights of others. When they do, according to the decision of the Court of Appeal, the entire group of cooperating churches becomes liable for the wrongdoing of a church over which no other church or group has control.

The test enunciated by the Court of Appeal is offensive to amicus and is offensive to the Constitution when it is applied to religious organizations. The test is overly broad and therefore raises constitutional issues which should be examined by this Court.

CONCLUSION

For the reasons stated above, amicus prays that Petitioners' request for a Writ of Certiorari be granted, thereby affording an opportunity for full briefing and argument of the case.

Respectfully submitted,

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Supreme Court, U. S.
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IN THE

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BRIEF *AMICUS CURIAE* OF THE NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

	PAGE
Interest of *Amicus Curiae*	1
Statement of the Case	3
Summary of Argument	5
Argument	
Point I—The First Amendment requires judicial deference to church construction of ecclesiastical matters	7
Point II—Church interpretation of polity and governance is a theological consideration with which civil courts may not interfere	11
Point III—The impact of a failure to reverse: judicial contradiction of unanimous church authorities on issues of internal polity would result in the unconstitutional preference of one form of polity over another and would force all religious denominations to revise theologically-based polity to conform to secular standards	18
A. The Roman Catholic Church	20
B. The Presbyterian Churches	21
C. The Society of Friends	23
D. The Baptist Churches	24
E. The Mennonite Churches	25
Point IV—The implications of the Court of Appeal's acceptance of Plaintiffs' overbroad definition of an "unincorporated association"	27
A. The Christian Church	28
B. Other Religions	29
Conclusion	30

TABLE OF AUTHORITIES

PAGE

Cases:

Bouldin v. Alexander, 82 U.S. (15 Wall.) 131 (1872) 14
Braunfeld v. Brown, 366 U.S. 599 (1961) 19

Cantwell v. Connecticut, 310 U.S. 296 (1940) 8n*

Engel v. Vitale, 370 U.S. 421 (1962) 19
Erie R. Co. v. Tompkins, 304 U.S. 64 (1938) 8n**
Everson v. Board of Educ., 330 U.S. 1 (1947) 18–19

General Council on Finance and Administration of the United Methodist Church v. Superior Court of California, —— U.S. ——, 99 S. Ct. 35 (1978) (Rehnquist, J., in chambers) 10
Georgia v. National Democratic Party, 447 F.2d 1271 (D.C. Cir. 1971) 28
Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1 (1929) 9

Jones v. Wolf, —— U.S. ——, 99 S. Ct. 3020 (1979) 6, 9
Juneau Spruce Corp. v. I.L.&W. Union, 119 Cal. App. 2d 144, 249 P.2d 23 (1952) 28

Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in North America, 344 U.S. 94 (1952) 8, 9, 12, 17
Kreshik v. St. Nicholas Cathedral of the Russian Orthodox Church of North America, 363 U.S. 190 (1960) 8

Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367 (1970) 8, 13
McGowan v. Maryland, 366 U.S. 420 (1961) 8n*

PAGE

National Labor Relations Board v. The Catholic Bishop of Chicago, —— U.S. ——, 99 S. Ct. 1313 (1979) 2, 16, 17

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969) 8, 14, 22

Serbian Eastern Orthodox Diocese for the United States of America v. Milivojevich, 426 U.S. 696 (1976) 8, 8–9, 11, 12, 13, 14, 16
St. John Chrysostom Greek Catholic Church of Pittsburgh v. Elko, 259 A.2d 419 (Pa. 1969) 16

United States v. Seeger, 380 U.S. 163 (1965) 19

Waltz v. Tax Commission, 397 U.S. 664 (1970) 7
Watson v. Jones, 80 U.S. (13 Wall.) 679 (1872) 8n**, 14
Wisconsin v. Yoder, 406 U.S. 205 (1972) 16–17, 25, 26

Statutes:

California Code of Civil Procedure Section 388 (West 1973) 27
California Corporation Code Section 24000 (West 1977) 3–4, 27

Books and Articles:

The American Jewish Yearbook 1977 (Fine and Himmelfarb, eds.) 29–30

Casad, *The Establishment Clause and the Ecumenical Movement,* 62 Mich. L. Rev. 419 (1964) 28–29

PAGE

Encyclopedia Britannica (1972 ed.):

Vol. 3 ..... 24, 25
Vol. 9 ..... 23, 24
Vol. 15 25
Vol. 18 ..... 22, 23
Vol. 19 ..... 15, 19, 21

Kauper, *Church Autonomy and the First Amendment —The Presbyterian Church Case,* 1969 Sup. Ct. Rev. 347 ..... 12, 14, 16

Mead, Handbook of Denominations in the United States (1965) 14, 15, 22, 23, 24, 25, 26, 27, 29

Note, *Judicial Intervention in Church Property Disputes—Some Constitutional Considerations,* 74 Yale L.J. 1113 (1965) 12

Note, *Judicial Intervention in Disputes Over the Use of Church Property,* 75 Harv. L. Rev. 1142 (1962) 12, 14, 16

Official Catholic Directory for 1977 20

The Random House Dictionary of the English Language (1973 ed.) 29

Schaver, The Polity of the Churches (1947) 12n, 14, 15

Yearbook of American and Canadian Churches, 1978 (Jacquet ed.) 19n, 20, 21, 22, 23, 24, 25, 29, 30

IN THE

Supreme Court of the United States

October Term, 1978

No. 79-245

FRANK T. BARR, *et al.*,

Plaintiffs,

vs.

THE UNITED METHODIST CHURCH, *et al.*,

Defendants.

BRIEF *AMICUS CURIAE* OF THE NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

Interest of *Amicus Curiae*

All parties have consented to the filing of this brief.

The interest of The National Council of the Churches of Christ in the United States of America ("the National Council") in the Petition for a Writ of Certiorari filed by Charles F. Golden, Paul W. Milhouse and James M.

Walton-Myers, being those persons upon whom service of process was attempted in the name of the United Methodist Church, a named defendant, arises from its concern for the constitutionally guaranteed freedom of each of its member denominations to establish, maintain and define its own internal structural organization as a matter of ecclesiastical polity and doctrinal interpretation, free from state interference.

The National Council appears as *amicus curiae* to present additional argument on the following points:

1. The impact on the free exercise of religion by other denominations and the Christian Church as a whole by the decision below.

2. The constitutionally impermissible entanglement of the courts in the church polities of other denominations which will result from application of the test for suability of denominations adopted below.

3. In view of the grave First Amendment problems presented by the decision below, it can only be sustained upon a threshold finding, not made below, of a clear expression on the part of the California Legislature of its intention to include religious denominations within the term "unincorporated association" in enacting Section 388 of the California Code of Civil Procedure. As observed by this Court in *National Labor Relations Board* v. *The Catholic Bishop of Chicago*, —— U.S. ——, at ——, 99 S. Ct. 1313, at 1322 (1979):

"[I]n the absence of a clear expression of Congress' intent to bring teachers in church-operated

> schools within the jurisdiction of the [National Labor Relations] Board, we decline to construe the [National Labor Relations] Act in a manner that could in turn call upon the Court to resolve difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses."

The National Council is incorporated under the Not-For-Profit Corporation Law of the State of New York. As stated in the Preamble to its Constitution, the National Council "is a cooperative agency of Christian communions seeking to fulfill the unity and mission to which God calls them." Its member communions total thirty-one Protestant and Orthodox religious denominations with an aggregate membership of 42,000,000 individuals throughout the United States. The National Council is organized exclusively for religious purposes. By its certificate of incorporation it is committed "to promote the application of the law of Christ in every relation of life."

Statement of the Case

The circumstances of the present litigation, as well as the opinions below, the jurisdiction of this Court, the constitutional provisions and rules involved, and the related matters pending before this Court are set forth in the Petition for a Writ of Certiorari (hereinafter referred to as "the Petition") and need not be repeated at length here. In addition, California Corporation Code § 24000 (West 1977) provides in pertinent part:

> "(a) As used in this part 'unincorporated association' means any partnership or other unincorporated organization of two or more persons, whether orga-

nized for profit or not, but does not include a government or governmental subdivision or agency."

By decision filed March 8, 1979 (a copy of which is attached as Appendix A to the Petition) the California Court of Appeal, Fourth Appellate District, Division One, reversed the Minute Order Decision of the trial court (a copy of which is attached as Appendix B to the Petition) and, erroneously accepting plaintiffs' unsupported assertion, held that the named defendant United Methodist Church ("UMC") is suable as an unincorporated association under California Code of Civil Procedure § 388. The Court of Appeal held:

> "The criteria applied to determine whether an entity is an unincorporated association are no more complicated than (1) a group whose members share a common purpose, and (2) who function under a common name where fairness requires the group to be recognized as a legal entity." (Appendix A to the Petition, at A-8 to A-9.)

In reaching this drastically overbroad conclusion, the Court of Appeal unconstitutionally substituted its own view of the UMC organization, including its own construction of the UMC Book of Discipline, for the authoritative and unanimous testimony of ecclesiastical experts.

Thereafter, the Court of Appeal denied a petition for rehearing, and the California Supreme Court subsequently denied a hearing. Petitioners now seek this Court's review of the judgment of the Court of Appeal.

Summary of Argument

The position of the National Council may be simply stated: the Court of Appeal's decision that the unincorporated denomination referred to as "The United Methodist Church" is a jural entity or unincorporated association subject to suit is clearly erroneous in that it utterly fails to extend the deference to religious authorities which the Constitution requires in all matters of essentially religious or theological concern. Failure to reverse the constitutional error committed by the Court of Appeal

(1) would unconstitutionally abridge the free exercise of religion, for it would necessarily force all religious denominations to re-examine and reorganize their internal church polities in light of the unprecedented potential for civil liability arising from the activities of a local or affiliated unit;

(2) would lead to the unconstitutional preference of some denominations over others by reason of almost inevitable holdings that some relatively closely organized denominations (*e.g.*, the Roman Catholic Church) are suable entities while relatively loosely organized denominations (*e.g.*, the Baptists) are not;

(3) would result in the gross intrusion and entanglement of the courts in church doctrine and polity of other denominations against which actions will undoubtedly be atttempted for the real or imagined wrongs done claimants by local parishes or congregations, hospitals or nursing homes, in direct contravention of this Court's consistent view that, under the First Amendment, "civil courts defer

to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization." *Jones* v. *Wolf,* —— U.S. ——, 99 S. Ct. 3020, 3025 (1979); and

(4) would improperly require this Court to resolve the foregoing difficult First Amendment questions in the absence of a clear expression of legislative intent to include religious denominations within the term "unincorporated association" as used in Section 388 of the California Code of Civil Procedure.

The freedoms of religion from State interference contained in the First Amendment have long been construed to compel judicial deference to ecclesiastical authorities in all controversies involving issues of faith, dogma and church governance. The internal structures, or polities, of the various Christian denominations in the United States and throughout the world do not reflect mere decisions of style or administrative convenience, but rather embody distinctive and fundamental principles of theological belief. Consequently, State revision or misinterpretation of church polity would violate the Constitution no less than would a rewriting or censorship of the underlying tenets of Christian faith.

In the instant case plaintiffs have persuaded the Court of Appeal to impose a judicially-created associational cohesiveness upon the UMC and its member congregations in the face of unanimous and uncontradicted ecclesiastical authority establishing that these congregations form only a loosely related "connectional" polity with no central authority controlling their spiritual or temporal affairs. Although there are religious units within or affiliated with the UMC which are incorporated and may therefore exist as *suable* jural entities, including the named defendant corporations General Council on Finance and Administration of the United Methodist Church ("GCFA") and the Pacific and Southwest Annual Conference of the United Methodist Church ("PSWAC"), the Court of Appeal's characterization of the United Methodist denomination itself as such an entity, particularly in the face of uncontradicted and authoritative theological testimony to the contrary, plainly violates fundamental Constitutional guarantees and subjects *all* denominations to the danger of judicial revision of religious organizational principles. The Court of Appeal's order must be promptly reversed.

ARGUMENT

POINT I

The First Amendment requires judicial deference to church construction of ecclesiastical matters.

It has long been established that the First Amendment forbids governmental interference with, or revision of, a religious denomination's resolution of ecclesiastical issues. The core meaning of the constitutional guarantees of religious freedom, contained in the "Establishment" and "Free Exercise" clauses of the First Amendment, is "that we will not tolerate either governmentally established religion or governmental interference with religion." *Walz* v. *Tax Commission,* 397 U.S. 664, 669 (1970). In order to give practical effect to these constitutional guarantees, this Court has established under the First and the Fourteenth

Amendments* "the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them." *Serbian Eastern Orthodox Diocese for the United States of America* v. *Milivojevich,* 426 U.S. 696, 713 (1976).

This fundamental constitutional principle requiring judicial deference to church interpretation of doctrinal issues has been invoked most frequently in cases developing out of denominational schisms, such as disputes involving church property, *see, e.g., Maryland and Virginia Eldership of the Churches of God.* v. *Church of God at Sharpsburg, Inc.,* 396 U.S. 367 (1970) (*per curiam*); *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 449-53 (1969); *Kreshik* v. *St. Nicholas Cathedral of the Russian Orthodox Church of North America,* 363 U.S. 190 (1960) (*per curiam*); *Watson* v. *Jones,* 80 U.S. (13 Wall.) 679, 727-29, 732-35 (1872)**; *cf. Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church in North America,* 344 U.S. 94 (1952) (legislative interference), or those involving alleged entitlement to church positions, *see, e.g., Serbian Orthodox*

* The guarantees of religious freedom established by the First Amendment are undisputedly made applicable to the states by the Fourteenth. *McGowan* v. *Maryland,* 366 U.S. 420, 429 (1961); *Cantwell* v. *Connecticut,* 310 U.S. 296, 303 (1940).

** *Watson* v. *Jones,* 80 U.S. (13 Wall.) 679 (1872) was a diversity action decided before the application of the First Amendment to the states and also before *Erie R. Co.* v. *Tompkins,* 304 U.S. 64 (1938). Although it consequently constituted a statement of general federal law, its language has been recognized as having "a clear constitutional ring." *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 446 (1969); *accord, Serbian Eastern Orthodox Diocese for the United States of America* v. *Milivojevich,* 426 U.S. 696, 710 (1976).

Diocese, supra, 426 U.S. at 708-720; *Gonzales* v. *Roman Catholic Archbishop of Manila,* 280 U.S. 1 (1929).

Nevertheless, the constitutional prohibition against judicial interference with matters of church law and governance is not restricted in its application to intra-denominational disputes over church property or position. Although it is admittedly disputes of that nature which are most likely to generate religious controversies, it is the fact that doctrinal issues are raised, not the mere procedural circumstance that the dispute is intra-church, which compels judicial deference to authoritative ecclesiastical sources. Whether the specific formal contentions involve property, title or governance, "[w]hat is at stake [in such cases] is the power to exercise religious authority," *Kedroff* v. *St. Nicholas Cathedral, supra,* 344 U.S. at 121 (Frankfurter, J., concurring). Consequently, whenever essential religious identities or principles are at stake, in whatever context the exercise of religious authority or doctrinal interpretation is placed in issue, "the First Amendment requires that the [civil] courts give deference to the [church's] determination of that church's identity [or polity]." *Jones* v. *Wolf, supra,* 99 S. Ct. at 3028 (footnote omitted). The fact that the instant action involves a claim alleged by a third party against a religious denomination does not alter this fundamental constitutional principle *insofar as issues of faith or doctrine* are raised. As discussed in Point II, *infra,* the question of church organization at issue in this case is clearly one which is an essential and inextricable part of core doctrinal concerns.

In this respect, the order and opinion issued by Mr. Justice Rehnquist as Circuit Justice in a related proceeding

is entirely inapposite. In that order Justice Rehnquist denied the emergency application of the General Council on Finance and Administration of the United Methodist Church ("GCFA") for a stay of all proceedings pending Supreme Court resolution of GCFA's petition for certiorari. *General Council on Finance and Administration of the United Methodist Church* v. *Superior Court of California,* —— U.S. ——, 99 S. Ct. 35 (1978). In its petition GCFA contended that the trial court had erroneously asserted "long-arm" personal jurisdiction over it by misconstruing the functions it performed on behalf of the United Methodist Church. GCFA, concededly an Illinois not-for-profit corporation which administers a small percentage of the total donations received by local United Methodist churches, did not dispute its own jural status as a suable entity. In rejecting GCFA's jurisdictional argument, Justice Rehnquist concluded that the lower court's rationale was not "entirely clear," and that its grounds for decision may not have included "its interpretation of Methodist polity." 99 S. Ct. at 38.

Alternatively, Justice Rehnquist stated his own view to be that First Amendment protections against judicial interference with "matters of ecclesiastical cognizance and polity" may not "apply outside the context of [intra-church] disputes." *Id.* His language makes clear that his reluctance to apply the established principle of non-interference to third-party disputes would be based on his perception of such third-party disputes as "purely secular" and not involving "essentially religious controversies." *Id.* Without expressing any view as to the applicability of these criteria to the corporate defendant GCFA, the National Council of Churches vigorously contends in Point

II, *infra,* that the polity of an international religious denomination such as the United Methodist Church, or of the relatively structured Roman Catholic Church as opposed to the relatively unstructured Religious Society of Friends, is precisely such as "essentially religious controversy," not a secular matter subject to civil court resolution.

Finally, to the extent that Justice Rehnquist's decision may be read to propose that civil courts be constitutionally permitted to evaluate doctrinal law and polity independent of authoritative church interpretation, it is respectfully submitted that this position was substantially expressed in his dissent, and rejected by the Court, in *Serbian Orthodox Diocese, supra.*

POINT II

Church interpretation of polity and governance is a theological consideration with which civil courts may not interfere.

Issues of internal church organization and authority constitute essential matters of religious belief, and the lower court's refusal to follow established church interpretation of church polity was constitutionally defective and must be remedied without delay. When presented with unanimous theological authority concerning an issue of denominational polity, as were the lower courts, a civil court is forbidden to substitute its own reading of church organization for that of the pertinent ecclesiastical authorities. The contrary decision by the Court of Appeal constitutes a gross breach of Jefferson's Wall of Separation by asserting the competence and authority of the civil judiciary to

decide the age-old issues over which the Wars of the Reformation were fought, issues which divided Protestant from Pope but also divided John Calvin from Martin Luther, John Wesley from Calvin, George Fox and the Quakers from the Church of England.

This Court expressly recognizes that the constitutional protection against state interference with ecclesiastical principles and beliefs, discussed in Point I, *supra,* extends to issues of denominational organization, administration and self-government. As held recently in *Serbian Orthodox Diocese, supra,* "This principle [of avoiding civil interpretation of religious doctrine] applies with equal force to church disputes over church polity and church administration." 426 U.S. at 710. *See also Kedroff* v. *St. Nicholas Cathedral, supra,* 344 U.S. at 116. Supporting this rule, of course, is the Court's recognition that matters of internal church "polity" embody essential principles of religious faith and dogma.* Kauper, *Church Autonomy and the First Amendment—The Presbyterian Church Case,* 1969 Sup. Ct. Rev. 347, 352-55 [hereinafter cited as *Church Autonomy*]; Note, *Judicial Intervention in Church Property Disputes—Some Constitutional Considerations,* 74 Yale L.J. 1113, 1132 *et seq.* (1965); Note, *Judicial Intervention in Disputes Over the Use of Church Property,* 75 Harv. L. Rev. 1142, 1158-1160 (1962).

Justice Brennan, the author of the opinion of the Court in *Serbian Orthodox Diocese,* had previously summarized

* "Polity refers to the general governmental structure of a church and the organs of authority defined by its own organic law." Kauper, *Church Autonomy and the First Amendment—The Presbyterian Church Case,* 1969 Sup. Ct. Rev. 347, 352-53 (footnote omitted); *see generally* Schaver, *The Polity of the Churches* (1947).

the constitutional danger of judicial interference with or revision of a denomination's interpretation of its own polity in *Md. & Va. Churches* v. *Sharpsburg Church, supra*:

> "To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine. Similarly, where the identity of the governing body or bodies that exercise general authority within a church is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy."

396 U.S. at 369-70 (concurring opinion) (footnote omitted), cited with approval in *Serbian Orthodox Diocese,* 426 U.S. at 723. For purposes of illustration, two examples of the many denominations in the United States make absolutely clear that the churches' respective polities constitute the outward manifestations of innermost principles of religious faith, and that their fundamental, and constitutionally protected, doctrinal differences are reflected in their equally well-established, and equally protected, organizational differences.

The courts have tended to identify two general but imprecise classifications of church polities: the congregational and the hierarchical. *See, e.g., Md. & Va. Churches* v. *Sharpsburg Church, supra,* 396 U.S. at 369 n. 1 (Brennan, J., concurring).* In the congregational form, each local

* Although the "congregational/hierarchical" dichotomy distinguishes broadly among polities on the basis of relative concentration or dispersion of authority, it does not, and is not intended to, describe with particularity the wide variety of denominational organizations existing in the United States. *See* discussion at Point III, *infra.*

church congregation is essentially self-governing, independent of ecclesiastical supervision, and autonomous in all matters of doctrine, liturgy and governance. *Watson* v. *Jones, supra,* 80 U.S. at 722, 724-26 (dictum); *Bouldin* v. *Alexander,* 82 U.S. (15 Wall.) 131 (1872); Schaver, *The Polity of the Churches,* 43-44 (1947) [hereinafter *Polity*]; Mead, *Handbook of Denominations in the United States,* 214-18, 242, (1965) [hereinafter *Denominations*]. Among the denominations adhering to this congregational polity are the various Baptist Churches. Central to the Baptists' fundamental theological creed is "the inherent freedom of the individual to approach God for himself," *Denominations* at 35, and consequently "[the Baptists] have insisted too upon the absolute autonomy of the local congregation [and] each church arranges its own worship, examines and baptizes its own members." *Id.* Thus the individual's doctrinal freedom to communicate directly and independently with God is reflected in each congregation's freedom from organizational supervision or restraint.

By contrast, in a hierarchical polity the local congregation is a unit of, and subordinate to, a larger organization consisting of ascending positions of ecclesiastical authority. *See, e.g., Serbian Orthodox Diocese, supra,* 426 U.S. at 715 and n. 9; *Presbyterian Church* v. *Hull Church, supra,* 393 U.S. at 441-442. The hierarchical category may be further subdivided into the episcopal polity, in which the various levels of authority rest in the hands of individual clerical officers, such as bishops, and the presbyterial, or synodical, polity, in which authority vests in a hierarchy of representative assemblies of laymen and clerics. *Church Autonomy* at 354-55; Note, *supra,* 75 Harv. L. Rev. at 1143-44. The hierarchical polities of the episcopal form, including that of the Roman Catholic Church, for example, focus all authority in an individual clerical superior who delegates responsibilities to inferior clerics and assemblies.

The Pope is the spiritual and governmental head of the Roman Catholic Church, the supreme authority in all issues of religious faith and church administration. The authoritarian hierarchical polity thus gives tangible shape to the doctrinal belief, central to the Roman Catholic faith, that the Pope is the lineal successor to the authority bestowed by Christ upon his apostle Peter. As proclaimed in the 1964 National Catholic Almanac's summary of Catholic belief, "[Christ] founded the church on a rock of infallibility and invincibility. . . . [Church] members profess one pastor (the Pope), the successor to St. Peter, to whom Christ committed his whole flock." *Denominations* at 196. From this fundamental religious tenet is derived the rigidly authoritarian polity of the church, including the central principle that papal declarations *ex cathedra* are doctrinally infallible and final on issues of faith. *See Polity* at 22-23. The Roman Catholic belief in the "organic unity of Christ, 'the fullness of the godhead bodily,' with the church 'which is his body' is the essence of Catholic ecclesiology. . . . 'By the very fact of being a body,' said [Pope] Leo XIII, 'the church is visible.' Its existence, institution, and operation are therefore sacramental." 19 Encyclopedia Britannica 464 (1972 ed.).

The foregoing summary of the parallelism between theological doctrine and denominational polity makes clear that, as expressly recognized by this Court, matters of church polity and organization reflect fundamental religious tenets. It is this demonstrable condition which explains

the rule of judicial deference in matters of church organization, *Serbian Orthodox Diecese, supra,* since "civil courts in identifying a church's polity for legal purposes are necessarily at the same time passing on an important ecclesiastical question respecting the nature of the church and its authority." *Church Autonomy* at 371; *see, e.g., St. John Chrysostom Greek Catholic Church of Pittsburgh* v. *Elko,* 259 A.2d 419 (Pa. 1969).

Consequently, in order to avoid constitutionally proscribed interference with ecclesiastical concerns, to the extent a civil court is faced with the responsibility of applying a rule or a statute such as the California Code's definition of an "unincorporated association" to the internal structure of a particular denomination it must (a) determine whether the Legislature intended to include church associations in the suable entities thus defined, *N.L.R.B.* v. *Catholic Bishop of Chicago, supra,* 99 S. Ct. 1313, and, only after making such determination, (b) defer to that denomination's own authoritative construction of church polity, for "lines of authority within polities are apt to be blurred, and the relevant church law chaotic, voluminous, and unintelligible to a court." Note, *supra,* 75 Harv. L. Rev. at 1160 (footnote omitted). *See Serbian Orthodox Diocese, supra,* 426 U.S. at 699 (sources of ecclesiastical law termed "ambiguous and seemingly inconsistent"). Such authoritative constructions may be located in the church's constitutional documents, *see, e.g., Serbian Orthodox Diocese, supra,* 426 U.S. at 715-17 and n. 9; they may be provided by expert canonical witnesses within the church, *id.,* at 718; and they can be confirmed by religious authorities in general. *See Wisconsin* v. *Yoder,* 406 U.S.

205, 209 *et seq.* (1972); *cf. Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. at 125 (Frankfurter, J., concurring).

In this context, it is plain that the opinion below is gravely erroneous. Nothing whatever has been adduced to suggest that the California Legislature intended to include church denominations among the unincorporated associations rendered suable in derogation of the common law. *N.L.R.B.* v. *Catholic Bishop of Chicago, supra.* Nor is this a case in which a court, faced with conflicting interpretations of denominational polity offered by differing theologians, was required to credit one construction as authoritative over another. In this action extensive and unanimous ecclesiastical proof was introduced before the trial court demonstrating that the polity of the UMC is a unique "connectionalism" consisting of largely autonomous local churches connected through nonauthoritarian conferences. Nevertheless, the Court of Appeal reversed the lower court and, in doing so, contradicted the undisputed expert testimony presented by church authorities concerning the UMC's decentralized polity; it imposed another vision of United Methodism which is unsupported by expert religious testimony and thereby characterized the UMC as an authoritarian, hierarchical organization; and it consequently concluded that the church demonstrates sufficient organizational cohesiveness to constitute a jural entity with the capacity to be sued. As is plainly established by the above-cited authorities, such judicial conduct constitutes a fundamental violation of the constitutional principle of avoiding state interference with ecclesiastical questions and must be reversed.

POINT III

The impact of a failure to reverse: judicial contradiction of unanimous church authorities on issues of internal polity would result in the unconstitutional preference of one form of polity over another and would force all religious denominations to revise theologically-based polity to conform to secular standards.

The National Council submits that it is absolutely clear that civil contradiction of unanimous church authority on matters of internal administration and polity, as erroneously effected by the lower court, would effectively restructure the workings of any church at the expense of substantive doctrinal beliefs and of due process.*

Moreover, it is of course established that the First Amendment guarantees that the State cannot "prefer one religion over another," *Everson* v. *Board of Educ.*, 330

* In the case of UMC, this result would impose an entirely artificial and unsupportable organizational structure upon what had authoritatively been considered to be a loosely assembled "connectional" polity. Independent member congregations which had never intended to be, and had never been, accountable for the acts of each other or of the United Methodist denomination itself, would be claimed to be vulnerable to the execution of any judgment which might be entered against the UMC.

Petitioners have made a showing that the UMC denomination does not itself own property or enter into contracts, and that there are *no* "common assets" other than those held by United Methodist units such as GCFA and PSWAC or by individual United Methodist member congregations. GCFA and PSWAC are named as defendants and are concededly jural entities for purposes of suit. Consequently, plaintiffs' attempt to include "the United Methodist Church" as an additional party can only amount to an effort to reach the assets and real property of the 43,000 individual member churches throughout the United States through a judicial reconstruction of United Methodist polity. Further discussion of the polity of United Methodism may be properly left with petitioners.

U.S. 1, 15 (1947), whether by explicitly favorable or unfavorable treatment or by indirect coercive pressure. *Engel* v. *Vitale*, 370 U.S. 421, 431 (1962); *Braunfeld* v. *Brown*, 366 U.S. 599, 607 (1961). The opinion below unmistakeably suggests that the lower court has determined to permit civil suit against the UMC, due to what the court deemed to be its hierarchical polity and without its consent, while it would deny the capacity of another to be sued because of its congregational or de-centralized polity. Should courts continue to intrude similarly into this issue, they will thereby create an unconstitutional distinction, for "then those who embrace one religious faith rather than another would be subject to penalties; and that kind of discrimination . . . would violate the Free Exercise Clause." *United States* v. *Seeger*, 380 U.S. 163, 188 (1965) (Douglas, J. concurring).

Failure to correct the lower court's unconstitutional judicial revision of church organization in contradiction of church authorities would in turn inevitably force the widespread reorganization of denominational polities into alien and doctrinally meaningless patterns. These reorganizations would be compelled solely in order to avoid the previously unintended, unforeseen, and unprecedented imposition of civil responsibility for the acts of any local or affiliated unit. The First Amendment forbids this result.

Consideration of a small sample of the 223 religious bodies most recently reported in the United States* illus-

* *Yearbook of American and Canadian Churches 1978*, pp. 217-224 (Jacquet ed.) (published by the National Council of Churches). These widely diverse denominations include more than 130,000,000 individual members and over 333,000 separate churches. *Id.*, at 224.

strates the rich diversity of church polities presently enjoyed in this country and graphically demonstrates the potential for chaos contained in the lower court's acceptance of plaintiffs' call for judicially compelled revision of religious organizations.

A. The Roman Catholic Church

The Roman Catholic Church, noted in Point II, *supra,* to be organized in an hierarchical polity of the episcopal form, is the largest single denomination of Christians in the United States with approximately 50,000,000 members. *The Official Catholic Directory for 1977,* cited in *Yearbook of American and Canadian Churches, 1978,* pp. 80, 222 (Jacquet ed.) [hereinafter cited as *1978 Yearbook*]. The central authority in Rome, including the Pope, the Episcopal College and the Roman Curia, exercises world-wide jurisdiction over the local divisions or ordinaries of the Church, which in the United States consist of 135 dioceses and 32 archidioceses normally headed by bishops and archbishops, respectively. *Id.,* at 252. Groups of dioceses form ecclesiastical provinces, and the diocesan heads periodically meet in the form of provincial councils. 19 *Encyclopedia Britannica* 468 (1972 ed.) [hereinafter cited only by volume and page]. The individual diocese is divided into parishes, presided over by pastors, and in 1977 there existed 17,872 parishes with resident pastors and 700 without resident clergy. *1978 Yearbook* at 252. There is no intermediate level of authority between the global authority of the Pope and the local diocesan authority of the bishops, and consequently there is no authority on the *national* level that is responsible for governing the church in the United States. In fact, when the bishops of the United States met periodically to consider issues on a national basis, they initially called their meetings "the National Catholic Welfare Council" but changed the title to "the National Catholic Welfare Conference" at the insistence of the Vatican lest the word "Council" imply that the national aggregation of bishops had some kind of juridical authority or responsibility in the Church. The same is true of its successor body, "the National Conference of Catholic Bishops," and its implementative counterpart, the United States Catholic Conference, neither of which is a governing body of the Roman Catholic Church on a national basis.

A vast number and variety of organizations have been organized or sponsored by constituent units of the Church, including in this country alone more than 10,000 educational institutions and 700 hospitals fully equipped with clerical and lay workers, *id.,* as well as numerous organizations of recent origin designed to facilitate communications among bishops, priests and the laity, including more national councils, diocesan councils, parish councils and parochial school boards. 19 *Britannica* at 488. Although the Church is structured hierarchically, no one could contend seriously that the "Roman Catholic Church" is a suable entity which in itself is civilly answerable for all the activities of each of the subordinate or affiliated organizations, or whose world-wide assets would be subject to levy by an American or foreign court.

B. The Presbyterian Churches

The Presbyterian denomination in the United States similarly presents an hierarchical structure, but whereas the clergy in the Roman Catholic Church are ordained and are

considered to receive their authority from the Pope, the Presbyterian ministry are elected as representatives of the members. There are ten Presbyterian bodies in the United States, of which the two largest are the United Presbyterian Church in the U.S.A. and the Presbyterian Church in the United States, with an aggregate membership of approximately 3,500,000 in more than 12,000 local churches. *1978 Yearbook* at 222-223; 18 *Britannica* 464. As recognized by the Court in *Presbyterian Church* v. *Hull Church, supra,* 393 U.S. at 441-442, the Presbyterian polity consists of four general categories of church judicatories: (1) the session, which is comprised of the pastor and church elders on the local congregational level; (2) the presbytery, which is formed by equal numbers of ministers and lay elders of the churches within a given geographical area; (3) the synod, which is composed of a number of presbyteries; and (4) the General Assembly, which is composed of members elected by the presbyteries. *Denominations* at 178. In Presbyterian churches of American background the presbytery is regarded as the basic unit, 18 *Britannica* at 468, although there are various boards, commissions and councils formed at every level which formulate policy and administer projects in many different areas, including mission work abroad and in the United States; public health and urban development; and education. *Denominations* at 179. Education has been a particularly fruitful field, and among the institutions owing their origin to Presbyterian endeavors are Princeton University and the Union Theological Seminary in New York City. 18 *Britannica* 464-465. In all there are more than one thousand universities and secondary or elementary schools which are either maintained by or associated with the Program Agency of the

United Presbyterian Church in the U.S.A., along with over 200 hospitals and clinics. *Denominations* at 179. Numerous other church councils and boards participate in a variety of educational, health and housing projects. *Id.*; 18 *Britannica* 465.

C. The Society of Friends

Equally active in the community at large though maintaining dramatically different principles of doctrine and polity is the Society of Friends, commonly called Quakers. Approximately one hundred thousand Quakers today participate in the two major American Quaker bodies, the Society of Friends, or Friends United Meeting (formerly the Five Years Meeting of Friends) and the Religious Society of Friends, or Friends General Conference. *Denominations* at 117-118; *1978 Yearbook,* at 57-58, 220. The form of worship and fellowship is founded upon the belief in the priesthood of all believers; men and women share equally in worship and in church organization; no specific creed, prescribed liturgy or outward sacrament is established. *Denominations* at 116; 9 *Britannica* 938, 940-41. Quaker religious services are therefore without uniform practice, and they often depend on quiet meditation and prayer with spontaneous vocal contributions. Even business sessions await "the sense of the meeting" and may have "quiet times" during which unity is sought. *Denominations* at 116; 9 *Britannica* 939-940. The principle unit of church government is the monthly meeting, a body which usually meets once a month on all doctrinal and administrative matters. The quarterly meeting, comprised of between two and twelve monthly meetings, is primarily a deliberative body concerned with worship. Quarterly meetings in turn

are grouped to form yearly meetings, which are forty-five in number and are autonomous, although linked through the Friends World Committee for Consultation ("FWCC"). *Denominations* at 115-117; 9 *Britannica* 940. Despite their lack of any strict, corporation-like executive organization, the Quakers have traditionally been active in public affairs, particularly in the fields of international peace and relief work. The FWCC and the American Friends Service Committee cooperate to assist in the operations of the Economic and Social Council of the United Nations, *Denominations* at 117, and many other programs and publications of regional, national and international scope are administered by or assisted in some fashion by the Quakers. *Denominations* at 117; 9 *Britannica* 942.

D. The Baptist Churches

The largest Protestant community in the United States is composed of approximately 25,000,000 Baptists who participate in twenty-seven different bodies, the largest of which are the Southern Baptist Convention (13,000,000 members and 35,000 churches), the National Baptist Convention, U.S.A., Inc. (5,500,000 members and 26,000 churches), the National Baptist Convention of America (2,700,000 members and over 11,000 churches), and the American Baptist Churches in the U.S.A. (1,600,000 members and 6,000 churches). *1978 Yearbook* at 217, 221, 223; *Denominations* at 33 *et seq.*; 3 *Britannica* 139-40. As discussed in Point II, *supra,* these churches practice a strict form of congregational polity, maintaining the total autonomy of local congregations in the sense that each of these congregations is a manifestation of the whole Church of Christ and need not derive its authority from any other

source. 3 *Britannica* 142-143. The congregations are interrelated in cooperative bodies on the regional, state and national levels but surrender no authority to these larger bodies, which exist to implement the common concerns of the congregations. *Id.* at 142. These cooperative agencies and affiliates exist within each of the Baptist denominations, and they sponsor or are otherwise involved in a wide variety of educational, medical and missionary services in the United States and elsewhere. *Denominations* 34-42.

E. The Mennonite Churches

In sharp contrast are the beliefs of the Old Order Amish Church, a conservative body numbering 15,000 within the general ranks of the 200,000 Mennonites in the United States. *1978 Yearbook* at 221. As with many churches, classification of Mennonite polity is difficult: "the several bodies of Mennonites vary somewhat among themselves, and Mennonites do not fit well into a classification such as congregational, synodal, or episcopal; their polity has elements of all three." 15 *Britannica* 160; *see Denominations* at 143-147. The Old Amish congregations have no general organization, do not conduct conferences, and worship in private homes. *Denominations* at 146; *1978 Yearbook* at 71. As noted in *Wisconsin* v. *Yoder, supra,* 406 U.S. at 209-213, the Amish emphasize withdrawal from modern culture and technology based on their central belief that "salvation requires life in a church community . . . aloof from the world and its values." 406 U.S. at 210.

The foregoing sketch of the polities of several denominations, and the activities in which they or their affiliates are involved, gives an indication of the scope and doctrinal

complexity of the impact which would be created by failure to reverse the lower court. As already noted in the specific case of the Roman Catholic Church, *supra,* it simply cannot be seriously suggested that these denominations constitute suable entities whose national and international assets would be at risk whenever any internal unit or affiliated organization is named in a civil suit.

To permit civil courts to rewrite the laws of authority and responsibility of a church's polity, as the lower court would have done, would compel religious denominations in the future to consult with legal counsel regarding every aspect of their structure of worship. Religious denominations would be forced to retain counsel to rearrange time-honored and doctrinally-based polity in order to avoid the impositions of civil liability, much as commercial corporations must plan for and adjust to the tax or antitrust consequences of various forms of organization. Rather than follow organizational principles derived directly from substantive ecclesiastical doctrine, *see* Point II, *supra,* church authorities would have to revise their modes of worship into unprecedented structures which would be "at odds with fundamental tenets of their religious beliefs," *Wisconsin* v. *Yoder, supra,* 406 U.S. at 218. For example, in 1931 the Congregational Church and the Christian Church merged, and in 1961 they joined with the Evangelical and Reformed Church to form the United Church of Christ. As Congregational bodies, each had originally proclaimed belief in the "freedom and responsibility of the individual soul and the right of private judgment . . . [and held] to the autonomy of the local church and its independence of all ecclesiastical control." *Denominations* at 75. The merger was intended to institute no theological changes

and, as the resultant constitution makes clear, church polity continues to respect local independence: "The autonomy of the local church is inherent and modifiable only by its own action. Nothing . . . shall destroy or limit the right of each local church to continue to operate *in the way customary to it.*" *Id.*, at 220 (emphasis in original).

Plaintiffs in this action would have the courts interfere with and inevitably prevent this unfettered exercise of religious belief and organization. The principle of judicial deference to ecclesiastical authorities on issues of church polity avoids this unconstitutional result, and the decision of the Court of Appeal must be reversed for its grave violation of this fundamental principle.

POINT IV

The implications of the Court of Appeal's acceptance of Plaintiffs' overbroad definition of an "unincorporated association."

The Court of Appeal purported to construe California Code of Civil Procedure § 388(a) and California Corporation Code § 24000 in support of its holding that UMC is a jural entity which may be subject to civil suit. However, § 388(a) provides only that any "unincorporated association . . . may sue and be sued . . ." and does not address the threshold issue of defining an "unincorporated association"; § 24000 simply states that an unincorporated association is an "organization of two or more persons . . . ."* Plaintiffs asserted and the Court of Appeal concluded, without citation of authority, that an unincorporated association is simply "(1) a group whose mem-

* *See* pp. 3-4, *supra.*

bers share a common purpose, and (2) who function under a common name." Appendix A to the Petition, at A-9.

The record before the lower courts contains uncontradicted expert evidence establishing that the only "common purpose" conceivably shared by members of the UMC is their worship of God in the Methodist fashion, and that their religious denomination has never exhibited the kind of quasi-corporate organization or activity which is the hallmark of the trade unions and other associations which previously constituted the kind of entity considered an "unincorporated association." *See, e.g., Georgia* v. *National Democratic Party,* 447 F.2d 1271 (D.C. Cir. 1971); *Juneau Spruce Corp.* v. *I. L. & W. Union,* 119 Cal. App. 2d 144, 259 P.2d 23 (1953).

Furthermore, the open-ended criteria proposed to define an unincorporated association are so broad as to be all inclusive. Brief consideration of even the most general religious categories further demonstrates the defectiveness of this proposed definition.

A. The Christian Church

The definition proposed by the plaintiffs and accepted below would be equally applicable to an association comprised of all Christians in the United States, for such association would be a group whose members share a common purpose (activities furthering Christianity) and a common name (the Christian Church). The possibility of just such an application of this dangerously overbroad definition of "unincorporated association" is supported by Casad, *The Establishment Clause and the Ecumenical Movement,* 62 Mich. L. Rev. 419, 423 (1964): "In this country we have

tended to consider the Christian religion as being necessarily embodied in a varying number of denominational churches, but there is nothing absolute about this system . . . It is just as appropriate—perhaps more so—to regard the Christian religion as being embodied in one universal 'church,' with each denomination being viewed as a subdivision of that larger body." In fact, a standard definition of the word "church" is "the whole body of Christian believers; Christendom." The Random House Dictionary of the English Language 265 (1973 ed.).

B. Other Religions

Mention must also be made of non-Christian religions. American Judaism is comprised of three divisions, in all of which the local congregation enjoys full independence: 1) Orthodox Judaism, whose organizations include the Union of Orthodox Jewish Congregations of America, the Union of Orthodox Rabbis of the United States and Canada, the Rabbinical Alliance of America and the Rabbinical Council of America, Inc.; 2) Conservative Judaism, including as national organizations the United Synagogue of America and the Rabbinical Assembly; and 3) Reform Judaism, with the Union of American Hebrew Congregations and the Central Conference of American Rabbis. *1978 Yearbook* at 63; *Denominations* at 127. More than 6,000,000 American Jews today participate in thousands of local synagogues, many of which are not affiliated with national organizations, and in all three branches there are numerous organizations involved in education, religion, politics and community affairs, cultural events, social welfare, and Zionist or pro-Israel activities. *See generally The American Jewish Yearbook 1977* (Fine and Himmel-

farb, eds.) (published by the American Jewish Committee), *cited in 1978 Yearbook* at 64.

Islamic religions would also constitute "an unincorporated association" under the criteria suggested by the plaintiffs and accepted below. Two million Moslems in the United States today share Islamic beliefs and practice the same rituals in a wide variety of societies, organizations and mosques. *1978 Yearbook* at 68. In fact, all other religions in this country whose members share the common name of their faith and common spiritual beliefs would be similarly within the overbroad sweep of the proposed definition, and are therefore threatened by the Court of Appeal's effective revision of the internal organizational principles of the UMC.

Conclusion

For the foregoing reasons, it is respectfully urged that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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